RUSS OLSON VOLUME 2D

TWIN CITY RAPID TRANSIT

HISTORY AND DEVELOPMENTS

1949 – 1954 AND THEREAFTER

Sub-divisions Within this Volume

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STORY OF THE
TAKEOVER

How MOBSTERS Grabbe

Minneapolis-St. Paul streetcar and bus riders are at the mercy of hoodlums who control the company. Fares have been hiked twice, service reduced, employees fired. Patrons wonder what will happen now

By GORDON SCHENDEL

WHEN President Charles Green strode into a shareholders' meeting of the Twin City Rapid Transit Company in Minneapolis, last December 18th, he exuded his customary self-confidence. But before the New Yorker could call the meeting to order, he was approached by four city detectives, hustled into an anteroom, and—despite his indignant objections, clearly audible to stockholders—frisked and relieved of the revolver concealed on his person.

The president insisted his hardware was merely a necessary substitute for the bodyguards the chief of police had refused him.

"I need protection!" he shouted, outraged. "A certain politician warned a friend of mine I 'should be careful to look behind me!' "

But though Green possessed a New York State gun-ownership permit, he was informed he had violated a Minnesota law prohibiting the carrying of a concealed weapon—and he was forced to face his company's stockholders throughout the meeting without the reassurance of his nickel-plated gat.

This byplay occurred after a split in ranks of the stockholders' group which a year earlier, under Green's leadership, had wrested control of the company from its former management. Enacted in the staid headquarters of one of the city's most conservative businesses, the incident gained little publicity in the Twin Cities, none at all outside the state. Yet it had national significance. It brought into momentary sharp focus a recent ominous development on the American scene: the expanding infiltration into legitimate businesses of gangsters operating on a national scale—with all that this means in possible resultant corruption of local government.

(Green, incidentally—using virtually the same tactics he employed in taking over the Twin City Rapid Transit Company, as detailed in this article—recently began an ambitious campaign to obtain control of the $28,000,000 United Cigar-Whelan Store Corporation, which operates a chain of 270 cigar and drug stores across the nation. Whether he will succeed in this latter project is being decided this week at a special stockholders' meeting on September 25th.)

The Twin City Rapid Transit Company, which owns the streetcar and bus system serving the million residents of Minneapolis, St. Paul and suburbs, is a $40,000,000 corporation with 3,000 stockholders scattered all over the United States and Canada. It is a holding company, the peak in a pyramid of eight corporations that operate the system's 773 streetcars, 359 busses and 440 miles of track. Organized 60 years ago in horsecar days, it had a completely unspectacular history—until about three years ago.

Sensational developments since that time were abruptly brought to light when, on September 7, 1950, the Minnesota State Railroad and Warehouse Commission (which holds regulatory and supervisory powers over common carriers) opened a full-scale investigation—as Commission Chairman Leonard E. Lindquist announced—"to determine whether there was truth in reports that racketeering elements have become interested in the Twin City Rapid Transit Company." A special assistant attorney general was appointed, at the request of Minnesota's then Governor Luther W. Youngdahl, to assist the commission at the hearing.

"Where racketeering is involved in a utility such as this," Lindquist warned, "the public pays tribute to gangster elements without getting any return in the form of improved service or economical and efficient operation; stockholders may be deprived of reasonable returns from their properties; and attempts often are made to corrupt public officials!"

At the hearing, which extended over two months, startling charges were made in testimony regarding transit-company stock ownership and management.

However, for the background of the story one must return to 1948. For many years, the Twin City Rapid Transit Company had been run by a board of directors composed of prominent citizens engrossed in their own large businesses. Most had no heavy financial interests in the transit system and regarded its management simply as a pleasant civic duty. It was their hobby—as toy electric railroads are for other men.

Testimony at the State Railroad and Warehouse Commission's hearing disclosed that the directors' financial policies had been carried out with the cautious deliberation of a Union Club chess game: in 20 years they had paid only one dividend, of $1, on the common stock—which despite once having sold as high as $108 has long been listed on the New York Stock Exchange at below $10. During the war when the company, in common with transit companies throughout the U.S., had made unexpectedly large profits due to gasoline rationing, rather than "cut the melon" for shareholders the directors wisely had used these profits to pay off nearly $8,000,000 of the $14,000,000 bonded indebtedness. And instead of converting to busses, like most systems, they continued buying streetcars.

Three years later, the situation had changed to such an extent that Chairman Lindquist of the State Railroad and Warehouse Commission, appearing before a subcommittee of the state legislature, charged that "police characters, ex-bootleggers and five persons involved in the investigations of the Kefauver Crime Investigating Committee are large stockholders in the Twin City Rapid Transit Company."

Before mobsters moved in, Charles Green got control of firm, sold holdings at big profit

The more unsavory principals in the transit-company affair were Isadore Blumenfeld and Tommy Banks.

Isadore Blumenfeld, alias Kid Cann, alias "Dr." Ferguson, alias Fergie the Bull, is Minneapolis' most notorious citizen. Squat, swarthy Blumenfeld, or Kid Cann, not only is a gangster but looks it—from "sharp" tailoring to sinister stare. He has bossed the Minneapolis underworld—with the afore-mentioned Tommy Banks—for 25 years. During prohibition, he and Banks in partnership controlled bootlegging. (Banks in addition monopolized gambling.) Both have been mentioned repeatedly in hearings of the U.S. Senate Crime Investigating Committee.

Millionaire Kid Cann has been arrested more than a dozen times on charges ranging from picking pockets up to murder. But he's been convicted only twice—in 1932, when he was fined $1,500 for operating an alcohol still, and in 1934, when he served a year in the Minneapolis workhouse on another liquor charge. (Previously, in 1928, he was arrested in the shooting of two Minneapolis policemen, but his indictment was nol-prossed. And in 1931, he was arrested in New Orleans as alleged head of a ring running Cuban liquor to the Northwest, but successfully fought extradition.)

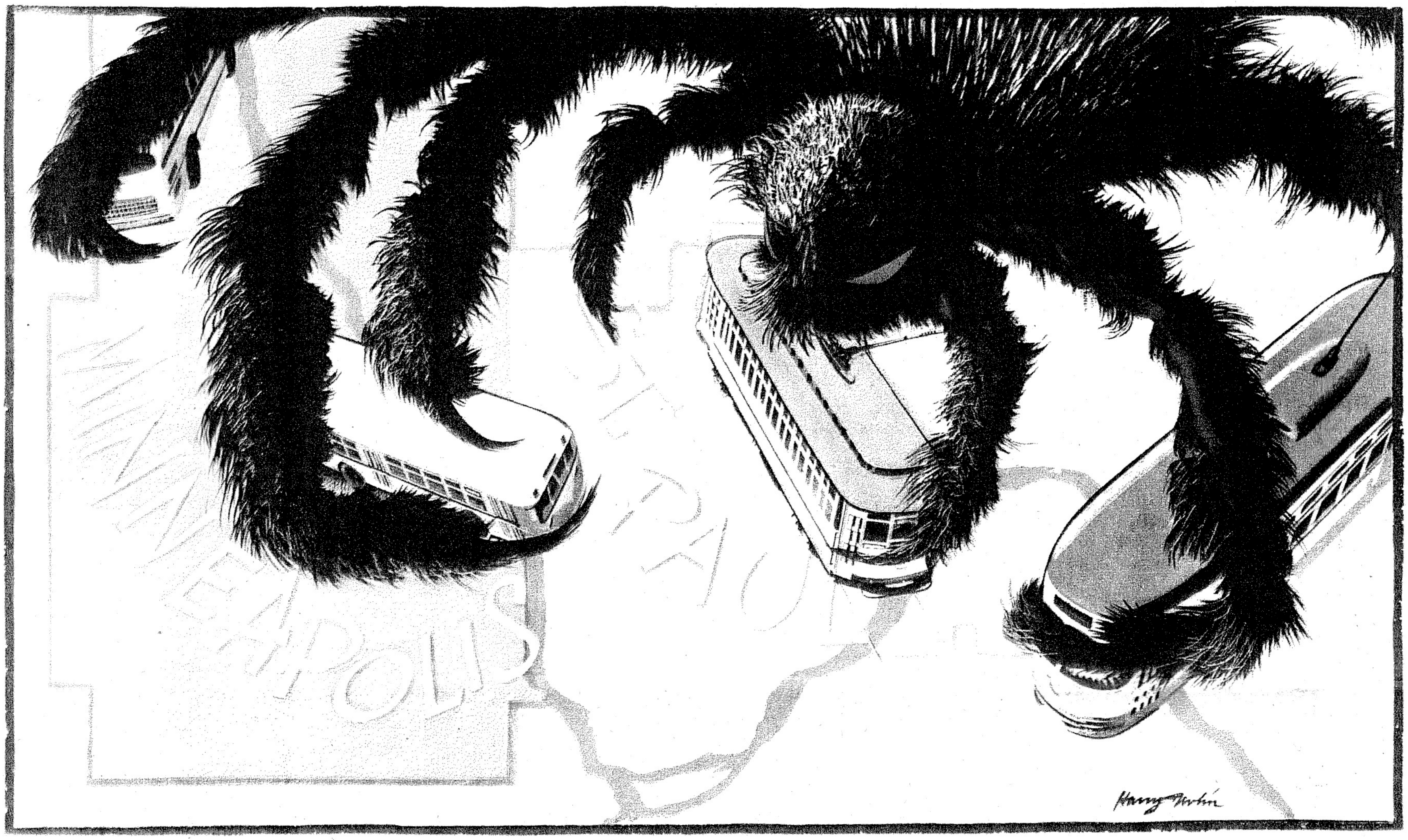
In the 1934 liquor case, Kid Cann, Tommy Banks and five others pleaded guilty as leaders of a huge ring supplying Minneapolis with illegal alcohol. (At this time, the other defendants in this case, Edward "Barney" Berman and Cliff Skelly, had appealed their five-year sentences in the famous Charles F. Urschel kidnaping case in Oklahoma City—in which each eventually served ove three years in federal prison. However, last yea Skelly received a pardon from President Truman, restoring his civil rights. Kid Cann himself had been indicted in the Urschel kidnaping, but had been acquitted.) A few days after the alcohol-ring indictments, Con Althen, the ring's reputed bookkeeper who had "talked" to the state's attorney, was found riddled with machine-gun bullets, in typical gang-execution style.

In the fall of 1935, Walter Liggett, editor of Th Mid-West American, Minneapolis weekly, complained to police he'd been beaten up by Kid Cann and six henchmen, after publishing an articl charging Cann with "muscling into" Minneapoli night clubs and establishing a gang-owned liquo store. Police blandly reported Cann "told a different story." So they made no arrests. Ligget nevertheless courageously continued his crusade. And on December 9th, just as he stepped out of hi car behind the modest apartment house where h lived, he was machine-gunned to death by a kille in a car waiting in the alley.

Liggett's wife, who had been with him, and a by stander both swore they'd instantly recognized th killer as Kid Cann.

"As he shot," Mrs. Liggett told police, shudde ing, "he had a snarling (Continued on page 7

a City's TRANSIT LINE



HARRY DEVLIN

Twin City Rapid Transit Company, serving a million people, is owned by 3,000 stockholders scattered over U.S. and Canada. Gangsters have far less than half of stock, but got control through proxies of the unsuspecting

Stockholder Tommy Banks, one of two hoods who have run Minneapolis gangdom 25 years

Fred A. Ossanna, criminal lawyer, political boss, is new chairman of firm and legal aid

Stockholder Kid Cann, ex-bootlegger and now a millionaire, shares rule of the underworld

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How Mobsters Grabbed a City's Transit Line

CONTINUED FROM PAGE 30

smile on his face I'll never forget!" And though Kid Cann produced an elaborate alibi, public clamor forced his arrest and indictment for murder. During his trial, sensational charges were made that jurors had been threatened with violence if they failed to vote for acquittal. Kid Cann was acquitted.

"We could not believe," the foreman of the jury explained away the positive eyewitness identification of Kid Cann, "*any* man who would commit a crime like this would stick his head out of his car in plain view of persons who might see him firing the machine gun."

Brawl in a Hotel Lobby

Minneapolis police long have handled Kid Cann with kid gloves. Three years ago, the hoodlum and two friends were involved in a drunken brawl with a stranger over a pretty girl in the Nicollet Hotel lobby. Until police arrived there was quite a fight—Kid Cann and his two husky friends versus the young man.

And whom did the police arrest? The lone young man! He was fined $10.

When newspapers reported the incident with editorial eyebrow-raising, Inspector of Detectives Eugene Bernath, in speaking before the Commonwealth Club, accused the press of "unnecessarily enlarging upon" the incident and "persecuting" the notorious gangster Kid Cann.

He asserted Cann "runs a very clean place now at The Happy Hour Café" (later Club Carnival, currently The Flame) and added:

"Among people who know Kid Cann, he is regarded as a sort of 'Sir Galahad,' ready to defend a woman he thinks is being annoyed."

(Mayor Hubert Humphrey, now U.S. senator, said: "Because one of the participants is reported to have been a man of considerable reputation in the underworld is no reason for persecuting him!")

The Minneapolis Star, quoting the police official's statement that Kid Cann ran The Happy Hour Café, pointed out that his criminal past made it illegal for him to hold a liquor license. This prompted Inspector Bernath to deny he had made any such statement. But few are fooled by Kid Cann's camouflaged ownership of The Flame and a half-dozen other night clubs and bars. His liquor licenses are held by friends who act as "fronts," despite the city liquor license committee's contention it has no evidence of this fact.

In addition to Minneapolis night clubs, real estate and his palatial home at 2305 Mount View Avenue, Kid Cann has heavy financial interests in Florida. Dan Sullivan, Greater Miami Crime Commission director, testifying before the U.S. Senate's Crime Investigating Committee, named Cann as one of the most powerfully entrenched gangsters in gangster-ridden Miami.

Until its recent sale, Cann was principal owner of Miami Beach's $2,000,000 Martinique Hotel, whose illegal gambling concession, Sullivan testified, was held by Jules Beeman, a partner in Miami's "Little Syndicate," with a long police record including a conviction for burglary and arrests (but not convictions) on homicide and narcotics charges. Interested in the Martinique with Kid Cann was the Ed Berman who twice served time in prison—in the Urschel kidnaping and for his partnership with Cann in the illegal alcohol ring. (Also connected with Cann was Ed's brother Dave Berman, ex-holdup man who has served a total of 11 years in New York and South Dakota prisons.)

Cann today insists he's "strictly legitimate." The notorious ex-convict and ex-bootlegger thus closely parrots the lines of Frank Costello, Tony Accardo, Joe Adonis and other Crime Syndicate big shots.

Tommy Banks, liquor and gambling czar, as earlier mentioned, with Kid Cann has ruled Minneapolis' underworld for 25 years. Banks—a millionaire who grows prize gladioli at his town house at 3817 Drew Avenue, South, Minneapolis, and raises prize cattle on his 370-acre estate on the Mississippi River—started out as an enterprising bellhop. Perhaps from sentiment, the bald, deceptively mild-looking rackets king still maintains as his office Room 1010 in the Dyckman Hotel—where in the "roaring twenties" he peddled "rotgut" to thirsty drummers. Though his criminal record bars him from a liquor license, through "fronts" he is understood to own or have an interest in approximately 20 Minneapolis night clubs and bars.

Like Cann, Tommy Banks has been arrested frequently on criminal charges but convicted only twice. In 1927, he was convicted and fined $2,500 in a liquor-distillery and conspiracy case. And in 1934, with Kid Cann and five others, he pleaded guilty in the huge alcohol-ring case in which the mob's alleged bookkeeper who "talked" was executed by machine gun. Banks merely was fined $2,000.

In 1941, Pete Hackett, Banks's bodyguard was shot after reportedly "blabbing" about underworld affairs. Banks, among others, was questioned. But Hackett recovered and refused to prefer charges.

Then, in 1945, Banks was questioned by police in the sensational murder of Albert Schneider, an organizer for the truck drivers' union. Schneider fell under a fusillade of bullets at the Casanova—a night club with a soiled reputation, reputedly owned by Banks—after he and his brother Fred, also a labor organizer, clashed with Banks and Rubin Shetsky, who managed the Casanova. Banks and Shetsky both fled after the killing. Banks later was cleared. (Shetsky was sentenced to life for murder. After serving three years, he gained a new trial and an acquittal.)

The guiding genius in the Twin City Rapid Transit stockholders' group of which Kid Cann and Tommy Banks were principals was Fred A. Ossanna, brilliant criminal attorney and Minneapolis' Democrat-Farmer Labor political boss.

Report on a Wealthy Lawyer

A tense, quiet-mannered man of fifty-eight, Ossanna is driven by a consuming ambition to get ahead in the world. He commands enormous fees as a trial lawyer. Of Italian descent, he was for years president of the National Italian-American Civic League and was twice decorated by the King of Italy. He unsuccessfully ran for mayor of Minneapolis in 1927; since, he has been the city's behind-the-scenes political boss. He is wealthy, owning two Minneapolis office buildings, an expensive home at Bal Harbour, Florida, and a 100-acre estate outside Minneapolis, which boasts a private lake and handsome stone house furnished with Louis XVI antiques he and his wife collected abroad.

Ossanna has had one brush with the law. In 1928, he was indicted for forgery in connection with an accounting of the assets of an Aurora, Minnesota, bank. But after a barge-line promoter and the bank president pleaded guilty to forgery and misleading a bank commissioner, respectively, the indictment against Ossanna was dismissed.

But to return to the Twin City Rapid Transit situation of today, we swing back to Charles Green, New York City businessman. A loud-voiced promoter, in his own words "always ready to make a fast buck," Green had piled up a wartime fortune while still in his early thirties—wholesaling electric appliances through his Green Sales Company, Inc., principally to U.S. Army PXs.

The story of the change in management of the Twin City Rapid Transit Company actually began when Green, seeking to invest his fat wartime profits, came upon one of the company's annual reports. Noting its unusually strong financial position and the disproportionately low price of its stock on the "Big Board," he decided he had found a "sleeper." He bought 6,000 shares.

But no dividends materialized. As testimony at the subsequent Minnesota State Railroad and Warehouse Commission's hearing revealed, Green composed a letter demanding the management be ousted and sent copies to all 3,000 stockholders.

The result was that President D. J. Strouse invited him to Minneapolis for a talk. Green rushed out—and speedily offended Strouse by advising him to spend less of the company's earnings on new equipment and service to the public "and instead pay dividends." Green further demanded he and two friends replace three of Strouse's backers on the board of directors. Strouse merely laughed in his face, and the talk ended with each shouting the other knew nothing about running a streetcar company. Green stormed back to New York, angrily determined to start a "proxy" fight to gain control.

Green later testified before the investigating State Railroad and Warehouse Commission that he was soon approached by Bigham D. Eblen, Detroit attorney who owned 7,200 shares of TCRTC and held proxies (voting rights) on 10,000 more belonging to friends. Eblen proposed they join forces to elect three of their own directors to the nine-man board, at the annual stockholders' meeting in March, 1949. They hatched a mail campaign to collect proxies from additional stockholders—yet failed to seize control at the meeting. However, Strouse conciliatingly offered two directorships—and Eblen and one of his legal clients, James A. Gibb, former operator of the Lansing, Michigan, transportation system, were put in.

Shortly thereafter (Green later testified), Eblen told him unless something was done the company soon would be in receivership. For TCRTC's financial report for 1949's first quarter showed a large deficit.

(Most transit companies have been in financial difficulties the last 20 years, excepting the war years, due to the increasing use of automobiles. In Minneapolis and St. Paul, a study by economist Harry Fiterman showed that, in the last 30 years, though population increased 55 per cent, transit passengers *decreased* 41 per cent.)

Green and Eblen (as Green subsequently testified) collected still more proxies, went to Minneapolis and handed the management an ultimatum—the firing of Strouse and an equal division of the directorships between the two factions. It was rejected.

"Okay," Green hotly retorted. "All offers are off. We'll play winner takes all!"

According to his testimony, he soon found a helper. Green testified that James B. Aune, customers' man for brokers Paine, Webber, Jackson & Curtis (through whom Green had purchased much of his transit stock), took him and Eblen to the Club Carnival. There Aune introduced them to its owner, the notorious rackets boss Isadore Blumenfeld, alias Kid Cann.

Aune mentioned Cann owned some transit stock and brought up Green's problem. Green then asked Cann, in confidence, what he knew of the Fred A. Ossanna whom Aune had recommended "as a real two-fisted attorney I ought to hook up with if I am going to have another proxy fight." Kid Cann recommended Ossanna very highly. Green, much impressed by Kid Cann, decided Ossanna was their man. Kid Cann's "selection" of Ossanna was a mere hint of the important role the gangster Cann soon was to play in the company's affairs.

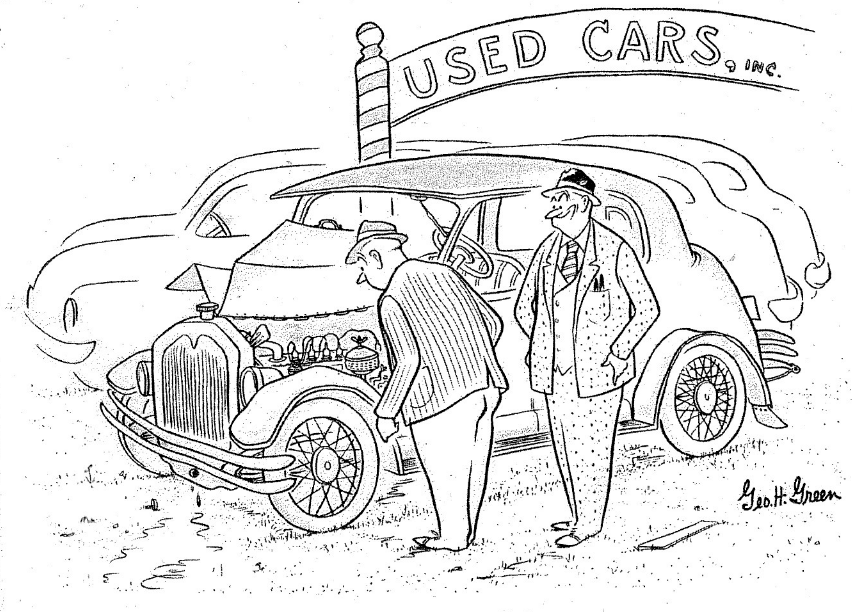
Many Proxies Sent by Mail

Green later testified that he quickly hired Ossanna as his personal representative in the coming proxy fight and they met frequently with Cann at his Club Carnival. Large stockholders all over the U.S., convinced by the profit-motive argument presented in letters sent out by Green, joined Green's fight, sending him their proxies. He thereupon demanded the old management resign in a body, as he now had "more than enough votes to oust them at the next stockholders' meeting." They finally yielded in November, 1949—and Green and his confreres triumphantly took over the Twin City Rapid Transit Company.

Green got the presidency, at an annual salary of $40,000 plus $6,000 for expenses; Detroit stockholder Eblen became chairman of the board; Ossanna was appointed legal counsel, at $24,000, and was made a director; Gibb, Eblen's protégé—as former head of a transit system, the only one who knew anything about running one—was made operations superintendent, at $25,000.

Green seemed determined to show the Minnesotans how a big-time operator from New York did things, for he at once began throwing his weight around. Having wrested control from the old management because the company was losing money (the 1949 deficit was $423,693.58), he took immediate steps to correct this—with a lack of diplomacy that, as later brought out in testimony, astounded even his own associates.

The Minnesota State Railroad and Ware-



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house Commission had just granted a fare increase from 11 to 12 cents. Green loudly demanded a 15-cent fare—and then a 17-cent fare. Then he fired more than 800 employees—nearly 25 per cent of the total personnel—slashing the annual payroll by $1,800,000, as testimony later revealed. He cut streetcar and bus schedules relentlessly—forcing thousands of citizens to freeze on street corners for long waits during Minnesota's harsh subzero winter. Worse, he completely discontinued lines with less patronage than he thought could be served profitably—a bitter blow to more thousands whose regular transportation between home and job was thus abruptly chopped off.

The State Railroad and Warehouse Commission and the city councils of Minneapolis and St. Paul were besieged by outraged citizens' groups. Newspapers of both cities denounced President Green. City officials protested a public utility had no legal right to defy public interest. But criticism merely infuriated Green.

"The public be damned!" he shouted. "I intend to force a profit out of this company! If necessary, I'll auction off all the streetcars and busses and sell the rails for scrap iron!"

He threatened, in dead earnest, to liquidate the entire St. Paul operation, as "there was too little profit in it."

Finally, the State Railroad and Warehouse Commission obtained a court order temporarily restraining the transit company from abandoning any *more* lines without a hearing.

About that time, as subsequently brought out in testimony before the commission, certain members of the new board of directors decided to scuttle their president, whose heavy-handed tactics had so alienated the public. However, as Green now owned 19,200 shares of stock, his votes were needed to keep the group in power, and at the annual stockholders' meeting in March, 1950, he was re-elected.

Efforts to Get Rid of Green

On May 12th, his opposition made its first move: the directors announced Green had been stripped of his authority to act as company spokesman, and, henceforth, official statements would come only from legal counsel Ossanna.

Testimony later disclosed that President Green, now effectively gagged, and the ambitious Ossanna, now actually in the driver's seat, clashed repeatedly and bitterly over company policies. Finally in June, Chairman of the Board Eblen, whom Green still considered a friend, asked sympathetically whether he would resign if he could sell his stock; Eblen named Detroit friends of his who he said would buy it. Green gave Eblen an option to buy his 19,200 shares for $249,000 (providing Green an estimated $100,000 profit), together with an agreement that when paid he would turn in his resignation.

Green further testified that while he was in New York briefly, his stock was purchased. Returning, he was chagrined to discover Eblen had not sold his stock to "Detroit buyers," but instead it actually had been bought—through Eblen—by Ossanna and Ossanna's group. And that Ossanna now was openly telling his associates he controlled the company. (The details of the stock transaction were brought out at the State Railroad and Warehouse Commission hearing.)

On July 17th, the State Railroad and Warehouse Commission granted the demanded boost in the transit company's fare to 15 cents. However, the commission's new chairman, Leonard E. Lindquist, had withheld his approval. In a letter to transit officials, Lindquist gave his reason: Ossanna had threatened that unless the commissioners promised to grant the increase within one week, in only 48 hours he would stop all Twin Cities transit service. "It would be hard to imagine," Lindquist wrote, "a more improper attempt to influence the decisions of a quasi-judicial body such as this."

He further pointed out that all the management's reductions in public service had been accompanied by statements they were made to benefit stockholders. Lindquist said he personally intended to investigate "just how much the stockholders had been benefited at the cost of the public, and just who they were."

Though Ossanna hadn't made good on his reported threat and later denied making it, Lindquist's reaction was the first sign of smoke on the new management's horizon.

About this time, as testimony at the commission's subsequent official investigation disclosed, Eblen announced Green and three pro-Green directors would resign September 11th. And the Minnesota State Securities and Exchange Commission received the routine record of Green's sale of his stock, but no identification of the buyers. Lindquist guessed Green now might "talk."

He and a fellow commissioner, N. J. Holmberg (who recently died and was succeeded by Ewald Lund), interviewed Green. And Green revealed enough to convince even Holmberg, who had approved the transit-fare increase, of shocking irregularities. Lindquist and Holmberg persuaded Green to postpone his resignation as president.

They immediately voted the afore-mentioned full-scale investigation by the State Railroad and Warehouse Commission into the transit company and the ownership of its stock (over the opposition of the third commissioner, Clifford C. Peterson) to probe the reports Chairman Lindquist said he'd received that "gangster elements" had become interested in the company.

The action had the effect of a bombshell.

Ossanna in statements to the newspapers at once lashed out at Lindquist, calling him a "cheap politician" who would "do or say anything to gain a vote," and flatly declared he "lied" about racketeering elements.

Green, in simultaneously released public statements, backed up Lindquist by asserting Ossanna's charge had been made without approval of the transit company management. And within the next few days, as disclosed in subsequent testimony, the company's executive committee (still composed of three pro-Green directors) ousted Ossanna as company spokesman and stripped him of his lucrative job as legal counsel. They canceled their own resignations and voted, with three local directors evidently willing to co-operate with the investigation, to refuse to accept Green's resignation. Eblen quit as board chairman to line up with Ossanna; the pro-Green majority appointed Director Paul Lambert, of St. Paul, to succeed him.

Fighting back, Ossanna organized a stockholders' committee which filed a demand for a special shareholders' meeting to force Green's resignation. Green and his cohorts rejected the demand on a technicality.

In the meantime, on September 7, 1950, the State Railroad and Warehouse Commission opened its investigation.

One of the first witnesses called was Clarence Holten, attorney for the new stockholders' committee. Holten testified Ossanna had asked him to be the committee's legal counsel and admitted the petitions demanding a meeting to remove Green had come from Ossanna's office; that it was Ossanna who had given him the names of the 11 persons who had bought Green's stock. Holten named the 11 (all stockholders-committee members) and their holdings. He emphatically denied any could be called "racketeers."

Underworld Link Is Traced

The investigation, however, revealed six of the 11 purchasers were directly linked to none other than Tommy Banks, the hoodlum who with Kid Cann for a quarter century has ruled the Minneapolis underworld!

Testimony showed that these six were: (1) Harold H. Banks, Lexington, Nebraska, businessman and brother of the underworld boss, with 2,000 shares; subpoenaed records showed this stock had been bought by Tommy Banks himself, then transferred. (2) Archie M. Cary, Minneapolis attorney, with another 2,000 shares. Cary has been legal counsel for many gangsters, including Tommy Banks; in addition, he is a partner with Banks and Banks's wife, Reta, in ownership of the Flour City Body Company, Minneapolis truck bodybuilders. (3) Jeremiah Murphy, with 1,000 shares. Murphy is manager of McCarthy's Café, swank suburban dining-and-drinking spot, and president of the corporation owning it—though he holds only one share of its stock, nearly all of it is owned by Banks's wife. Murphy, too, didn't buy his transit stock directly from Green; it was first purchased by Mrs. Banks's McCarthy's Café. (4) Thomas E. Ewing, 1,000 shares. Ewing is current manager (and holds the liquor license) of the afore-mentioned Casanova Café. It was brought out in testimony that Banks, Ewing and one Harry Shepard, an ex-convict, own the building occupied by the Casanova. (5) Harry H. Clark, 2,000 shares. Clark manages Brady's Bar, generally accepted as being owned by Banks; furthermore, he is a director and small stockholder of the Banks-owned corporation running McCarthy's Café. And he is a partner with Banks in a California gambling club. (6) The afore-mentioned Harry Shepard, 3,000 shares. Shepard, who served time in Minnesota's Stillwater prison for a hit-and-run killing, was for 15 years a partner with Banks in the Coin-A-Matic Amusement Company, pinball-machine distributor. He still is a partner with Banks and Ewing in ownership of the Casanova Café building, and a partner with Banks and Clark in the California gambling club.

(Though both Banks and Kid Cann set up their junior partners as ostensible owners, they usually "cut" them in for only a small interest.)

Besides these six, the others who split Green's stock were: (1) Max R. Saliterman, 1,000 shares. Liquor salesman for a St. Paul wholesale firm, Saliterman testified he had been a close friend of Kid Cann since their childhood. He sells both Cann's and Banks's night clubs a great deal of liquor. (2) Dr. David Ellison, 1,000 shares. Commission Chairman Lindquist, in a report he made on the investigation to Senator Estes Kefauver of the U.S. Senate committee investigating organized crime, identified Dr. Ellison as "Kid Cann's doctor." (3) James B. Aune, 2,000 shares.

Customers' man Aune, who had introduced Green and Kid Cann, handled most of the sales of transit stock to the Minneapolis racketeers. Subpoenaed, he defiantly

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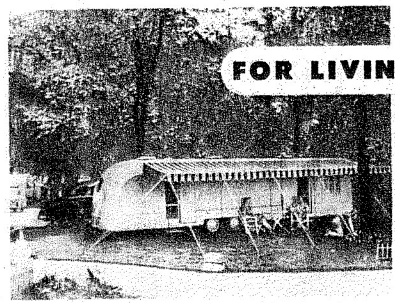

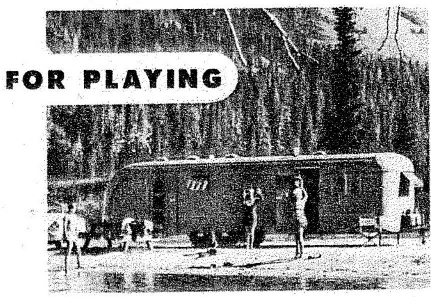

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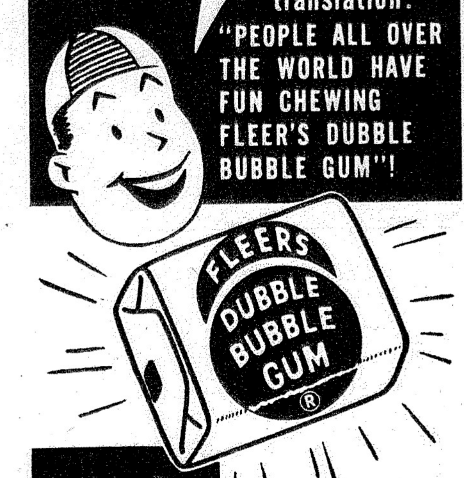
"IL N'Y A PAS DES BOULES COMME DUBBLE BUBBLE"*

*translation: "PEOPLE ALL OVER THE WORLD HAVE FUN CHEWING FLEER'S DUBBLE BUBBLE GUM"!



1¢ FUNNIES, FORTUNES, FACTS ON EVERY WRAPPER!

FRANK H. FLEER CORP.
PHILADELPHIA 41, PA.

refused to disclose whether he'd handled any for Cann. (The commission won a suit to force brokers to disclose such information; a countersuit contesting the decision is now in the state Supreme Court.) (4) James H. Towey, 3,000 shares. Druggist Towey is a long-time friend of Aune, the latter testified. (5) Ossanna, 1,200 shares. Ossanna—who, according to testimony at the hearing, had encouraged Archie Cary, attorney and business partner of hoodlum Tommy Banks, to buy stock in the transit company, and who had been recommended as attorney for Green by Kid Cann—himself bought what remained of Green's stock.

But Ossanna had kept in the background. A reputable businessman, Emil B. Aslesen, Minneapolis restaurant-supplies dealer doing a big trade with Banks's and Kid Cann's night clubs, had been made chairman of the new stockholders' committee—though he had only 400 shares of stock. To oust Green's forces, the committee conventionally began soliciting more stockholders' proxies.

However, the committee gained what subsequently proved to be more than enough votes to enable it to get control of the company merely through the greatly increased stock purchases of Ossanna and those of the two gangster czars, Kid Cann and Tommy Banks (together with Cann's and Banks's business partners and hoodlum associates).

Chairman of the State Railroad and Warehouse Commission Lindquist, in reports to both Governor Youngdahl and U.S. Senator Kefauver, asserted that information obtained from brokers' records and company stock records disclosed Ossanna had increased his stockholdings to 12,600 shares—that Tommy Banks and his previously named six associates had increased their holdings to 15,100 shares—and that Kid Cann had increased his to 10,800 shares.

Friends Also Bought Stock

(In addition, other friends of the two underworld kings had stepped in to buy stock. These included: Gilbert W. Kitt, owner of the Empire Coin Machine Company, Chicago, who's sold many slot machines to Banks; Kitt bought 3,090 shares. William "Weeping Willie" Hecht, who once paid a fine in connection with a horse-race gambling charge which resulted in a St. Paul detective being ousted; Weeping Willie took 1,490 shares. Two more of Tommy Banks's partners came in: Earl A. Jeffords, an incorporator of the Banks-owned McCarthy Café, and one of its directors, bought 500 shares. And Charles Holleran, Banks's partner in the Blue Goose Inn, Garrison, Minnesota, and in the Horseshoe Club, Gardena, California, gambling palace, bought 500 shares.)

(The Horseshoe Club, where thousands legally gamble enormous sums at poker, was investigated by the Senate Crime Committee. Banks financed it by setting up a corporation to construct the building, which he then leased to his brother-in-law, Hardy Lee. Holleran, former associate of Jack "Greasy Thumb" Guzik, the "collector" for the Capone Syndicate in Chicago, is the club manager. Besides Holleran, Banks cut in nine Minneapolis partners including three women. Of the eight male partners, six have police records and three are ex-convicts. One is Phillip "Flippy" Share, who's been convicted of bombing a café, served time on a liquor-law offense that involved kidnaping and torturing a boy with lighted cigarettes, and has twice beaten a murder rap.)

"Over 25 per cent of the Twin City Rapid Transit stock is held by persons of questionable character," Commission Chairman Lindquist said, in his report to the Kefauver Committee. "It is obvious that this is a strong enough faction to control management votes.

"While the holdings of Mr. Ossanna, Kid Cann, Tommy Banks and associates may not constitute a numerical majority of the outstanding stock," he reported to Governor Youngdahl, "so much of the other stock is . . . in small lots or in the hands of people living at distant points that the combined holdings of Ossanna, Kid Cann, Tommy Banks and associates are sufficient in actual practice for them to exercise effective control of this company. Under the Public Utilities Holding Company Act of 1935 and other federal legislation, it is recognized that a 10 per cent interest or even less in diversified voting stock may constitute actual control."

Though the holdings of Ossanna, Kid Cann, Banks and their partners and associates totaled $750,000, it was brought out in testimony by Banks's partners that through using their stock as security they'd been able to obtain bank loans of 50 per cent of its market value. So, with a cash outlay of less than $400,000—they were about to capture a $40,000,000 public utility!

Just how cocksure the gangster czars were of their triumph—even months before the annual stockholders' meeting when they would make their bid to take over control—can be judged from a curiously distorted "Local Boy Makes Good" item that appeared November 16, 1950, in Tommy Banks's home-town newspaper, the Dawson County Herald (Lexington, Nebraska):

IS PRESIDENT OF
TRANSIENT LINES

Thomas W. Banks, of Minneapolis, Minn., a former Lexington resident, has taken over management of the Minneapolis and St. Paul trolley and bus lines. The lines will be known as the Banks Transient Lines of Minneapolis and St. Paul. Thomas Banks is president and Harold Banks, who will remain here, is vice-president.

(The Minneapolis Star reprinted the item, explaining, tongue in cheek, it liked "to bring its readers interesting bits of information about Minneapolis people from other publications.")

Furthermore, Governor Youngdahl received a letter from a trusted friend, warning that a man, who identified himself as a henchman of underworld boss Tommy Banks and a member of the syndicate, had openly bragged "their group" was going to "throw out Green and take over the Minneapolis Street Railways, at a stockholders' meeting in March," and then would "reap a pot of gold."

The governor, when asked what he'd done about it, said:

"The legislature was about to adjourn, so I asked it to appoint a special interim committee to investigate the transit company. The House approved, but the Senate swiftly killed the bill."

To return to the State Railroad and Warehouse Commission's investigation—transit company president Green, testifying as its star witness, at once made highly sensational, specific charges:

When transit employees had begun dickering for a raise (finally granted this June), he testified, Ossanna had demanded $2,500 to bribe employees "to spy on and betray their union." Green said he had objected, but had provided the fund after Ossanna had insisted, "That's the way things are done around here."

A Slush-Fund Proposition

Then Ossanna had proposed, Green testified, that they set up a "slush fund" to buy concessions for the transit company—such as the elimination of charges for street cleaning and maintenance and the modification of streetcar and bus schedules—from members of the Minneapolis City Council. Inasmuch as a public utility is barred by law from making contributions for political purposes, Ossanna had proposed, Green charged, that they build up this slush fund by arranging for kickbacks on products purchased by the company, such as gasoline for its 350 busses.

He testified Ossanna had wanted him to buy gasoline from Blau Gas, Inc., at higher than the competitive price, so Blau Gas could refund the difference. If a kickback of 1⅜ cents per gallon was arranged, Green claimed Ossanna had told him, they soon could build up a fund of $20,000—and with this he could buy "a $200,000 bundle" of concessions. Green testified that Ossanna, who was also legal counsel for the Minneapolis Yellow Cab Company, had said: "That is the way we built up a slush fund over at Yellow Taxi."

"He named six or eight aldermen he could buy," Green continued. "One or two he said he didn't need to pay anything."

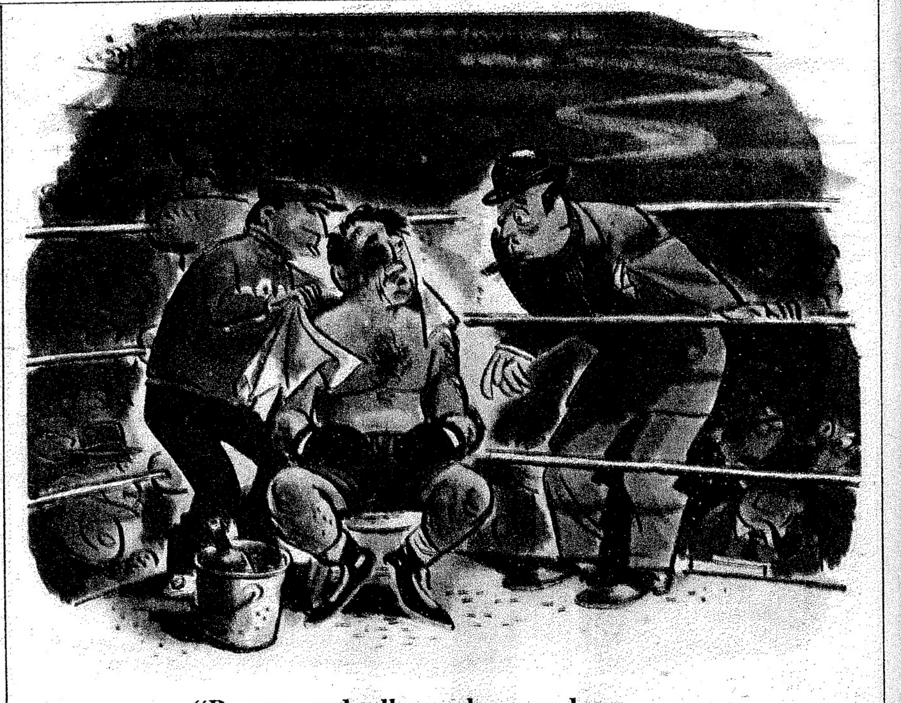
Green testified he'd refused to consent to this illegal deal. And Eblen, then still chairman of the board, hearing of "bad blood" between Ossanna and Green, had approached Green as peacemaker. Green said Eblen had advised:

"Charlie, you better get out of Ossanna's way."

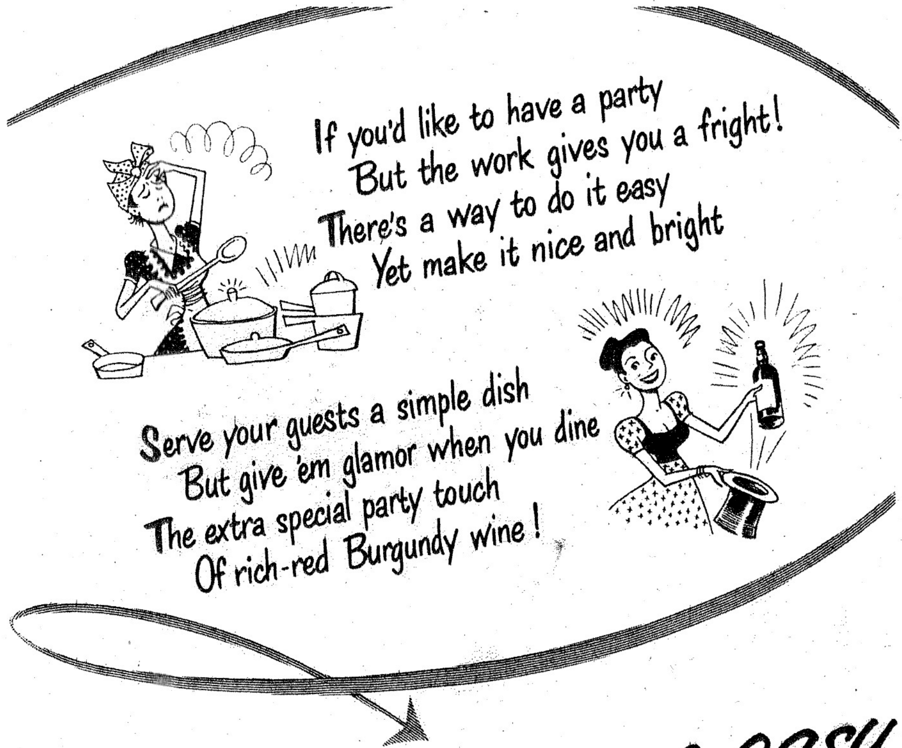
Green added Eblen further had warned he was "dealing with boys who play for keeps" and with a graphic gesture had indicated, Green said, that he might get shot.

At this point, the Kefauver Committee sent an observer.

Green was subpoenaed to testify before the Hennepin County (Minneapolis) grand jury about his charges that Ossanna had bought aldermen. This made the sixth official body drawn into the investigation;



COLLIER'S "Be sure and tell me when you hear the bell. *I* hear one all the time" HANK KETCHAM



If you'd like to have a party
But the work gives you a fright!
There's a way to do it easy
Yet make it nice and bright

Serve your guests a simple dish
But give 'em glamor when you dine
The extra special party touch
Of rich-red Burgundy wine!

Good things come easy the California Way

Serve California's fine Burgundy wine with spaghetti and meat balls

You can do it wherever you live—give a lift to spaghetti, baked beans and red meats like hamburger and roasts . . . with a hearty red Burgundy wine. It's so easy—just cool and pour. And wine costs only a few cents a glass to serve.

When you are dining out, get acquainted with the world-famous wines of California. They are featured by leading restaurants and hotels everywhere. Among those to try are Sherry with your appetizers . . . California Burgundies, Clarets, Sauternes and Chablis with your dinner . . . or Port with dessert. Wine Advisory Board, San Francisco, California.

WINE ADDS TO GRACIOUS HOSPITALITY IN MILLIONS OF AMERICAN HOMES

for, in addition to the State Railroad and Warehouse Commission, the Ramsey County (St. Paul) grand jury, the Federal Securities and Exchange Commission and the New York Stock Exchange already were investigating charges that gangsters had bought into the TCRTC. And the ethics committee of the Hennepin County Bar Association was studying the record of the commission's hearings, following testimony by Green and John F. Dulebohn, the head of the company's claims department, about damage suits against the streetcar company.

(Dulebohn testified that at the same time Ossanna was legal counsel for the streetcar company, he or some of his associates or partners represented approximately 15 persons who had claims against the company.)

The Witness Was Worried

Myles Johns, of St. Paul, had testified before the Railroad and Warehouse Commission on more "fixing" of aldermen. Johns, president of Broadcasting Services, Inc., which had installed radios on 300 streetcars and busses, said he had approached Ossanna worried about a proposed Minneapolis ordinance banning transit radios, and Ossanna had told him, "You don't need to worry about this. I have got the situation all greased." (Nevertheless, the ordinance had passed.) In the next two days, the Hennepin County grand jury called both Green and Ossanna and heard their testimony; it didn't get around to Johns until three weeks later.

Then Johns, obviously shaken, arrived under guard of the sheriff and a deputy of neighboring Dakota County. Johns said he had been kidnaped the night before by two men who had told him they intended to see he didn't testify. He had escaped only after they had ordered him out of his car in a lonely spot and fired two shots at him.

(Green previously had demanded police bodyguards, asserting anonymous phone calls had threatened his family with physical harm if he continued testifying, and he himself had been warned: "If you don't get out of town and go back to New York, they're going to carry you feet first!")

Refused police protection, Green had hired four bodyguards. A month later, the governor had assigned two men from the State Bureau of Criminal Apprehension to guard him. Chairman Lindquist of the Railroad and Warehouse Commission said he and his wife also had received threatening phone calls.)

The Hennepin County grand jury indicted Ossanna for perjury in denying he had suggested building up a slush fund to buy political favors from aldermen. (Company directors James Gibb and A. D. Robertson had testified at the commission hearing that they, too, had heard Ossanna's slush fund proposal.) Ossanna was released on $2,000 bond pending trial.

Just two days later, last December 18th, the new stockholders' committee Ossanna had organized got the special stockholders' meeting it had been refused months before. The opposing factions met in a hostile atmosphere—and it was then Green was frisked by the four off-duty city detectives and relieved of his revolver. Police Chief Tom Jones said it was Ossanna who had hired the four—explaining he had a "four-to-one edge" over Green's group in votes and felt they were necessary "to prevent any general roughhouse at the stockholders' meeting."

But Ossanna's anticipation of victory was premature—Green's group had obtained a court order temporarily barring the election of new directors, on the grounds Ossanna's stockholders' committee had made "false or misleading" statements in soliciting proxies. Furious at being balked a second time, Ossanna asserted he still would win.

And a month later District Court Judge Levi Hall dismissed the perjury indictment against him on the basis of "insufficient evidence." In the meantime, the State Railroad and Warehouse Commission had adjourned its hearing. And all other investigations had petered out. The Hennepin County Bar Association had taken no action against Ossanna. And a transit company "compromise" was rumored.

Sure enough, Green pulled another switch, and the crucial annual stockholders' meeting, last March 12th, ended as a virtual "love feast"—to the disgust of citizens who'd begun to regard Green as a knight in shining armor battling the gangsters, now convinced he'd "made a deal" with them. Green stated "the new directors are entitled to a chance to work together before they are judged," thus giving a pat on the back to the Ossanna group—which had just taken over control, by a vote of 192,000 to 73,000. (The 192,000 included, of course, the votes of many reputable stockholders whose proxies the Ossanna group had successfully solicited—mostly from outside the Twin Cities.) And though Green could have remained president two more years to defy the Ossanna group, he resigned.

Ossanna was elected chairman of the board of directors and reinstated as the company's legal counsel. Aslesen was made president. Dr. Ellison, who according to the testimony was "Kid Cann's doctor," was made a director and "company medical director." And broker Aune, who Green testified had originally introduced him to Kid Cann, also was made a director.

"And," as Commission Chairman Lindquist summed it up in his report to the governor, "Mr. Ossanna and his associates took over full control of the transit company's management."

But the citizens of Minneapolis and St. Paul don't seem worried about Kid Cann's and Tommy Banks's roles in the ruling stockholders' group. After all, they have lived a long time amidst a more-than-normal rash of racketeers and killers.

Where Wanted Men Were Safe

Back in the thirties, gangsters from all over the U.S. were allowed refuge in Minneapolis and St. Paul—and such notorious characters congregated there as Dillinger, Alvin Karpis and Baby Face Nelson. Simultaneously there occurred a run of kidnapings in St. Paul (St. Paul Police Chief Thomas A. Brown later was dismissed from the force on grounds he had been a conspirator in two of the kidnapings), of labor-leader murders in Minneapolis, of Murder, Inc., assassinations in St. Paul, and of haphazard hoodlum killings in both cities.

In Minneapolis alone, three crusading newspaper editors who had accused politicians of protecting racketeers were silenced permanently by machine guns—Howard Guilford, editor of the Saturday Press, murdered in 1934; the earlier-mentioned Walter Liggett, editor of the Mid-West American, murdered in 1935; Arthur Kasherman, editor of the Public Press, murdered in 1945—and in only one case did the police even bother to arrest a suspect—and he was soon freed. U.S. Attorney General Homer Cummings, in Roosevelt's first Cabinet, labeled the Twin Cities then "the poison spot of the nation." So perhaps nowadays their citizens just can't get excited about ordinary gangster affairs.

And what is the future of the Twin City Rapid Transit Company? Since 1948, fares have been raised twice and a third raise is sought, service has been cut down, and hundreds of employees have lost their jobs. The big question today is: Where is the company going under control of a stockholders' group heavily infiltrated by gangsters?

Chairman Lindquist of the State Railroad and Warehouse Commission warned in his report to the governor, on last March 22d:

"The activities of this (new stockholders') group, both before and after taking control, give good reason to fear that it may exploit the transit company for improper purposes." THE END

Newspaper article Index in Mpls Publ. Library Mpls History Collection

7-21-50 Star Green, other officers, resign trolley jobs

3-14-51 Star Asleson elected head of trolley company

9-17-51 Trib Assanna to head trolley company; Asleson retires

7-1-52 Star Trolley officials quit in shakeup

12-30-52 Star Photo of new company emblem

6-3-53 Star D J Brien quits as aid to trolley head

The Charles Green Story
From St.Paul Dispatch and Pioneer Press Clippings
2-20-1949 thru 3-31-1950

It was the dearth of dividend payments to common stockholders that enabled Charles Green to rally support for a management takeover of Twin City Rapid Transit Co.

He began purchasing common stock in 1944 after he read TCRT Annual Reports. He and members of his family added to their holdings during the next two years. In 1946 they received a dividend of $1 per share, the only dividend on common stock in 19 years.

In 1947 when the stock price took a drop, Green wrote to Strouse asking for an explanation. He received a formal, uninformative letter in reply. During 1948 Green was still unable to get the information he wanted so he sent a form letter to all stockholders asking if they were interested in joining with him in finding out "just what is going on with this company". Said he received hundreds of letters from worried stockholders.

During the July 4th 1948 weekend Green came to Minneapolis and met with Strouse. Green recommended three new directors to represent the minority stockholders. "Strouse laughed in my face." Green made up his mind then that "Strouse had to go".

Background. In March, 1934, he went into business for himself forming the Charles Green Sales Company, a partnership, with sole rights to distribute Gillette razor blades in New York City. In 1945 the firm expanded its activities to include wholesale distribution of electrical appliances. A New York corporation was formed, Green Sales Inc., with Green as president. (The brother was treasurer and one sister was secretary.) The corporation bought the commercial assets of the partnership which was turned into an investment partnership in behalf of Green, his brother, and three sisters. (276 5th Ave., New York City.) Eventually he, his wife, his brother, and three sisters owned more than 19,000 shares of TCRT Co. common stock and 1,180 shares of TCRT Co. preferred stock. This was 7% of the total shares outstanding and was the largest single holding. That investment cost them almost $300,000. When he became president of TCRT Co. he resigned as chairman of the board of Green Sales Inc.

2-20-1949. Green held 4,600 shares of common stock and 30 shares of preferred stock. At the TCRT Co. annual meeting to be held Monday, March 14th, he would seek to replace three directors (D. J. Strouse, C. T. Jaffray, E. W. Decker) with himself, William J. Cody of Detroit and Dr. Ellis Myers of Baltimore. Green attacked (1) lack of dividends on common stock, and (2) use of depreciation charges and earned net income to buy new equipment instead of paying off bonded indebtedness.

5-3-1949. At the TCRT Co. annual meeting all the present officers were re-elected. C. T. Jaffray was re-elected a director. The Strouse faction had 120,815 votes, the Green faction 111,812 votes. As a conciliation to the minority stockholders George A. Dobbie and Alfred L. Pillsbury withdrew from the board of directors and were replaced by B. D. Eblen of Detroit and J. A. Gibb of Lansing, Michigan.

9-21-1949. Charles Green to begin a new fight for control of TCRT Co.

10-12-1949. A group of principal stockholders to meet in the Twin Cities October 20-21, 1949, at either the Hotel St.Paul or the Radisson Hotel in Minneapolis. Fred Ossanna says he is included in the list of principal stockholders. Green has managed to switch 20,000 to 25,000 votes which originally went to Strouse. Green reportedly now has 25,000 shares of stock, along with his sister). Rumor is that a well-known Minneapolis police character is a heavy stockholder; Ossanna says he has no more than 200 shares. (When Green was asked about this in Feb. 1950 he said Isadore Blumenfeld had owned 600?/800? shares but latest records indicate he sold them.)

10-22-1949. Twenty stockholders are reported to have joined with Charles Green. They met at the Radisson Hotel, Minneapolis, last Friday.

10-29-1949. The TCRT Co. board of directors met Friday refused Green's demand that all nine directors resign immediately. A special stockholders meeting was set for December 19th. At the board of directors meeting were Green, Paul Lambert (St.Paul wholesale tobacco dealer), Ossanna, and Philip Fitzpatrick (St.Paul engineer). Green's purposes at the meeting were (1) remove the entire board of nine directors, (2) elect new directors, and (3) demand an audit by independent auditors from 1-1-1944 to date. Green and his sister own 25,000 shares and Ossanna about 7,000 shares. Lambert represented a family group owning 12,000 shares of which his uncle, Leon J. Lambert of Reno, Nevada, was a principal stockholder. Fitzpatrick was the spokesman for his family group (inherited his father's stock holdings) which owned less than 2,000 shares. The Green/Ossanna group will have about 200,000 shares on their side.

11-8-1949. TCRT Co. management will be taken over within the next 24 hours. Seven of nine directors resigned: Strouse, Jaffray, Decker, Seeger, Washburn, Deacon, and Cathcart. Decker also resigned as a vice-president. It was acknowledged that Green's group had gained more than a majority of the 314,812 shares of common and preferred stock outstanding. Also last Sunday D. J. Strouse reached the company's retirement age. Heretofore no company employee or official had remained active after reaching retirement age and Strouse said he did not want to be the first to break tradition. Strouse had informed the TCRT Co. board of directors in the spring of 1949 that he would resign upon reaching retirement age.

11-9-1949. TCRT Co. management changed at 2:30 p.m. Tuesday, November 8th.
Charles Green was elected president.
James A. Gibb (president and general manager of Inter City Coach Line Co., Lansing, Mich.,
  is to become executive vice president and general manager.
Bigham D. Eblen, attorney, Detroit, was elected chairman of the board of directors. Fred Fred Ossanna was elected a director and also General Counsel. (He replaced [1] Dorsey, Colman, Parker,
  Scott & Barber, Minneapolis, and [2] Doherty, Rumble, Butler and Mitchell, St.Paul.)
Herbert A. Einhorn, New York City, was named associate general counsel.
Other new directors were the following.
  Alexander D. Robertson, Miami, formerly of Minneapolis. His father was Alexander M. Robertson, an officer of TCRT Co. from 1906-1933. (He was vice president & general manager at the time of his death in 1933.)
  Paul Lambert, McFadden-Lambert Co., St.Paul, (wholesale tobacco and candy company).
  Philip W. Fitzpatrick, president of West Virginia Coal & Transportation Co., St.Paul. His father, the late J. F. Fitzpatrick, was a TCRT Co. director from 1926 until his death in 1944.
  Albert Sobol, attorney, New York City. Formerly associated with the legal department of New York Railways Corp. and now a director of Roosevelt School, Hyde Park, N.Y.
  Arnold J. Boldt, Davenport, Iowa, securities dealer.

3-10-1950. The annual stockholders meeting on Monday re-elected Charles Green president and the eight other directors.

Service Cuts Started The War

12-3-1949. It was reported that many "cars" had been eliminated from the schedules on St.Paul lines: Minneapolis-St.Paul 7, Selby-Lake 5, Como-Harriet 4 (+ 3 to come), St.Clair-Payne 5, Hamline-Cherokee 2, Maria-Ft.Snelling 2, Grand-Mississippi 2, Dale-Wheelock 2, and Rice-S.St.Paul 2. Green claimed these changes were "set in motion" by the previous management. D. J. Strouse, on 12-12-1949 said this statement was correct.

12-16-1949. It was reported that 66 trips in St.Paul had been eliminated during 1949. Grand-Mississippi 18, Ft. Snelling-Maria 3, Selby-Lake 22, Randolph-Hazel Park-Mahtomedi 14, and St. Clair-Payne 9.

January 1950: heated discussions in the press about streetcar and bus service, and the requested fare increases.

1-13-1950. Headline: "Green Wants Taxpayers to Share Tram Loss; Asks Profit or We'll Liquidate". Quotations:

"We are entitled to a 5% return on our investment as fixed by the Minnesota Railroad & Warehouse Commission, or $1,500,000 per year."

"Green said:
We will cut service;
We'll fight in court;
We'll liquidate the company in orderly procedure before we go bankrupt;
Before the company goes into financial difficulties I'll sell the buses, I'll sell the company's real estate."

St.Paul Newspaper Article
3-10-1950

Charles Green said that buses will replace streetcars in the future if funds are available. Eight to 10 years before changeover can be made. Only exceptions would be such streetcar routes as:

Grand-Mississippi
Selby-Lake
St.Paul-Minneapolis
Como-Harriet

Ed Nelson said that the heaviest St.Paul local line was Randolph-Hazel Park-Mahtomedi. The last (1952) local lines in St.Paul were Grand-Mississippi and Hamline-Cherokee.

The heaviest Minneapolis local lines were Chicago-Penn-Fremont and Nicollet-2nd St.N.E.

October 10, 2002

In one of the photograph albums received from the estate of Joel Hutchinson a sheet of notebook paper with the following information written in ball-point pen was found. No date or source of information was indicated. No explanation as to how the Value column was determined; calculations work out to $12.50 per share for all except Kid Cann's Wife which is $37.50 per share.

Stock Ownership in TCRT

	Shares	Value	
Kid Cann [Isadore Blumenfeld)	9,300	$116,250	
Tommy Banks	500	6,250	
Harold Banks	2,400	30,000	Related or tied in with Tommy Banks
Harry Clark	2,000	25,000	
Jeremiah Murphy	1,000	12,500	
Thomas E. Ewing	1,300	16,250	
Harry Shepard	3,000	37,500	
Archie Cary	4,900	61,250	
Fred Ossanna	12,600	157,500	
Max R. Saliterman	2,000	25,000	
James Aune	2,550	31,875	
Kid Cann's Wife	1,500	56,250	

Value $37.50 per share

TCL

2-23-51 correspondence
Charles Green President
Alexander D. Robertson Treas.
James A. Gibb Vice Pres.
H. R. Duncan Comptroller
J. L. Dahill Asst Treas.

3-13-51 correspondence
Emil D. Axelson President
J. H. Towey Treasurer
D. E. Ellison Vice Pres.

9-20-51 correspondence
Fred A. Ossanna President
J. H. Towey Treasurer
Duncan and Dahill as above

6-11-56 correspondence
F. A. Ossanna President
David E. Ellison Exec. V.P.
J. H. Towey Secy and Treas. also 1953
<OVER>

The following newspaper story, published on June 21, 1954, three days after abandonment of the system, is reprinted with permission from the Minneapolis Star and Tribune.

CONVERSION HEADACHE IS OVER

★ ★ ★ ★ ★ ★ ★ ★ ★ ★ ★ ★ ★ ★ ★ ★

Beef, Coffee, Jute Offered for Streetcars

By **LARRY FITZMAURICE**
Minneapolis Star Staff Writer

PATRONS OF TWIN CITY Rapid Transit Co. rode to work on an all-bus operation today, but Fred A. Ossanna, president, recalled that there were some weeks during the conversion from trolley cars when officials didn't know whether they were in the transportation business, the beef, coffee, jute or marble business.

When Ossanna, then chairman of the board, announced thre years ago plans to convert the streetcar system to buses, the company's biggest need was for cash to go ahead with the project.

The executives envisioned junking power plants, 750 streetcars, 400 miles of track and overhead lines, car manufacturing and repair shops and other equipment and right of way valued at 20 million dollars.

New buses costing 15 million dollars were to replace them.

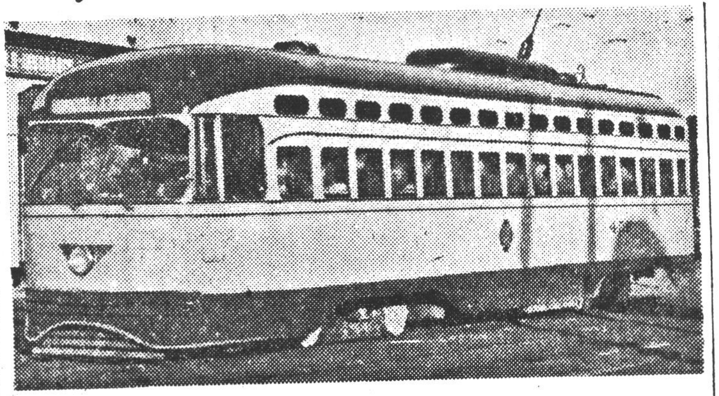
In some of the nation's leading financial houses which Ossanna approached for credit to buy the new equipment, the plan was looked upon as a form of economic suicide, Ossanna recalled.

In their desperate attempt to raise cash, Ossanna and his staff contacted agents in many lands in an effort to sell some of the company's late model rolling stock.

This included 141 streamlined PCC streetcars which had been added to the Minneapolis system between 1946 and 1949 at a cost of $3,500,000.

Ossanna revealed today that the company had bids from Calcutta, India; Rome, Italy; Buenos Aires, Argentina, and Rio de Janeiro, Brazil.

The complexities of international trade being what they are, Ossanna said he quickly ran into some snags.



TROLLEY SALES HIT SOME SNAGS
Ossanna wouldn't take jute bags

Calcutta would buy the cars providing Ossanna would take payment in jute bags; Rome wanted them if the company would accept equal value in Italian marble; Buenos Aires was willing to swap for Argentine beef, and Rio de Janeiro was anxious to make a deal in exchange for Brazilian coffee.

Eventually some leads began developing closer to home.

Subsequently, deals were closed sending 20 cars to Cleveland, Ohio, for $260,000, 30 to the Public Service Co. of New Jersey for $300,000 and 91 to Mexico City for $1,200,000.

In recent months TCRT has added to this salvage cash pile by selling its power plant near the Third avenue bridge to Northern States Power Co. for $1,500,000; the Lake street and East side stations in Minneapolis and the Duluth street station, 1177 E. Seventh street, St. Paul, to Mid-Continent Development and Construction Co. for $300,000 and the company garage at 164 W. Fifth street, St. Paul, for $105,000.

The company also deeded to the city of Minneapolis a section of the Como-Oak-Harriet right of way, which had been carried on the TCRT books at $685,212, as part of a settlement involving an additional $1,200,000 for track removal and paving.

It also sold scattered parcels of land along its seven-mile right of way between St. Paul and Mahtomedi and some other real estate for $50,000, cleaned up scrap iron, copper, lead and other metals around its shops and realized approximately $150,000.

With this money coming in, Ossanna revealed, the company was in a position to bargain with General Motors Corp. for purchase or lease of 525 new diesel-powered buses and spend $1,090,000 expanding its garage facilities for the full fleet of 886 vehicles.

The company expects to house approximately 300 buses each in former streetcar barns at Twenty-fifth and Washington avenues N., Thirty-first street and Nicollet avenue, Minneapolis, and Snelling and University avenues, St. Paul.

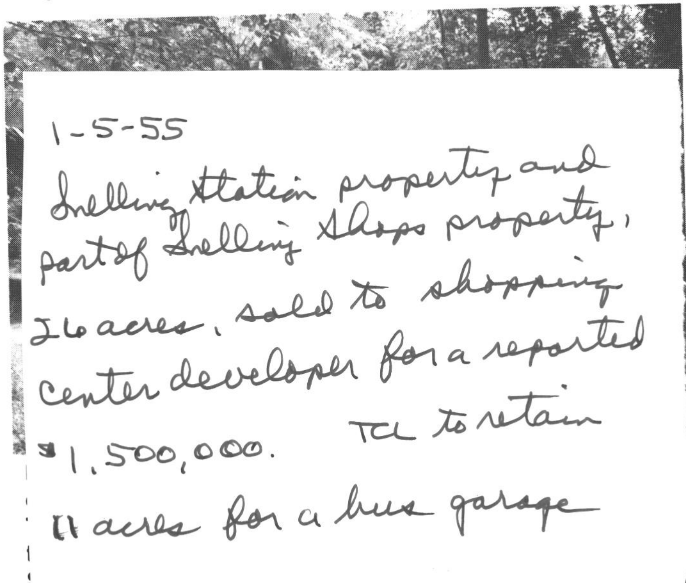
Elimination of the streetcars, sale of real estate and salvage are expected to save the company hundreds of thousands of dollars in personal and real estate taxes annually, Ossanna said.

Offsetting these savings, however, will be increased taxes on the company's bus fleet in the way of licenses and other fees, plus taxes the company will have to pay indirectly for fuel. Ossanna estimated that state and federal taxes on diesel fuel and gasoline will total $700,000 a year.

Under the combined operation it has cost the company an average of 74 cents a mile of route traveled in recent years. With a 100 per cent bus operation, the company will be shooting at an average of 60 cents a mile.

TCRT reached an all-time high employment peak of 3,721 persons in November, 1949. It was 2,997 when Ossanna became head of the company in March, 1951.

With the complete elimination of two man operations, the consolidation of bus routes and other changes, employment has been stabilized at about 2,000, Ossanna said.



1-5-55

Snelling Station property and part of Snelling Shops property, 26 acres, sold to shopping center developer for a reported $1,500,000. TCL to retain 11 acres for a bus garage

NEWSPAPER ARTICLE FIGURES

PCC Cars

141 cars Purchased 1946-1949		Total Cost	$3,500,000
1953 Sales:			
Cleveland	20 cars	$ 260,000	
Newark	30 cars	300,000	
Mexico City	91 cars	1,200,000	
Total			$1,760,000
Loss			$1,740,000
			=========

Real Estate and Buildings

Main Steam Station sold to Northern States Power Co.	$1,500,000
St. Paul Bus Garage @ 164 W. 5th St. sold	105,000
Lake St., East Side, and Duluth Ave. Car Stations sold to Mid-Continent Development & Construction Co.	300,000*
Mahtomedi R/W parcels, plus some other real estate sold	50,000
Harriet R/W valued at $685,212 deeded to City of Minneapolis as part of a settlement involving an additional $1,200,000 for track removal and paving.	

Scrap

Scrap iron, copper, lead, and other metals around the shop	$150,000

* Harry Isaacs d.b.a.
Mid-Continent Development & Construction Co.

Detail of two Agreements, both dated 12-24-1953:

1. Real estate, buildings, rails, equipment, trolley wire, machinery and other salvage:

Lake St. Car Station	$120,000
East Side Car Station	80,000
Minnehaha Substation	5,000
University Substation	10,000
Lake St. Substation	10,000
Total	$225,000
	=======

2. Machinery, trolley wire, equipment, and other salvage, EXCLUDING buildings:

Girard Substation	$1,000
Lowry Substation	1,000
11th St. Substation	3,000
Total	$5,000
	=====

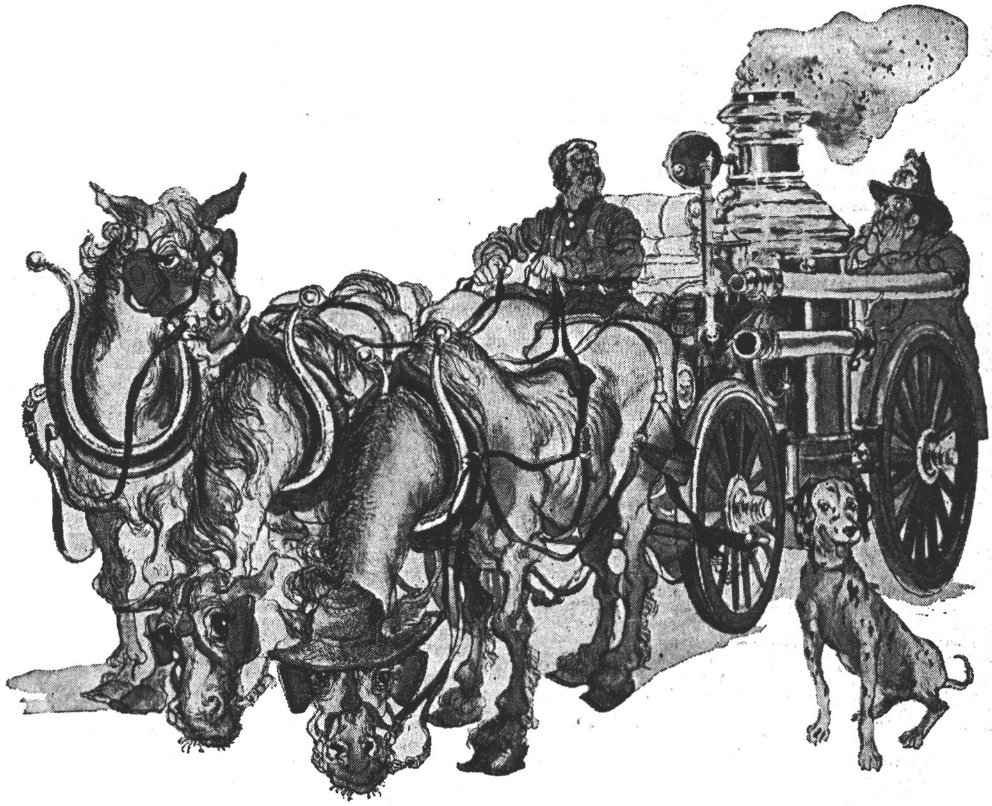
In this issue: **Selling Transit Service**

MASS TRANSPORTATION

OUR GOLDEN
ANNIVERSARY
YEAR
1954

FORTY CENTS

JULY, 1954



LOST HORSEPOWER can be dangerous...and costly!

When bells clang and sirens scream, you know that the fire engines in your community are on their way... and you're proud of that equipment, because it's ready to meet any emergency with full, responsive horsepower!

You'll be proud, too, of the full, responsive horsepower in every automobile engine that you have equipped with Perfect Circle 2-in-1 Chrome Piston Rings.

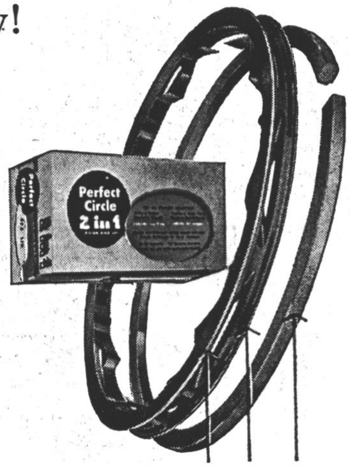
For 2-in-1 gives sustained power and oil economy for *over twice as long* as old style rings. In the 2-in-1 set, both the top ring and the oil ring rails are plated with thick, solid chrome, giving wear protection throughout the entire area of ring travel.

Install Perfect Circle's 2-in-1 Chrome Rings on every re-ring job. Your customers will like the improved performance and oil economy! Perfect Circle Corporation, Hagerstown, Ind.; The Perfect Circle Co., Ltd., Toronto, Ont.

Perfect Circle

2 in 1 chrome piston rings

The Standard of Comparison



Solid chrome plating on both top and bottom rings gives complete wear protection throughout entire area of ring travel. Rings are lapped-in at factory, making tedious break-in unnecessary.

JULY 1954

The skyline of Minneapolis—the city of lakes—is dominated by the 32-story, tapered Foshay Tower—a "must" for all visitors.

Fred Ossanna, a lawyer turned transit man, has been in the driver's seat for the drive to all bus operation in the Twin Cities. Here the genial president of the Twin City Rapid Transit Company is shown at the wheel of one of his new GMC buses.

Rapid Conversion

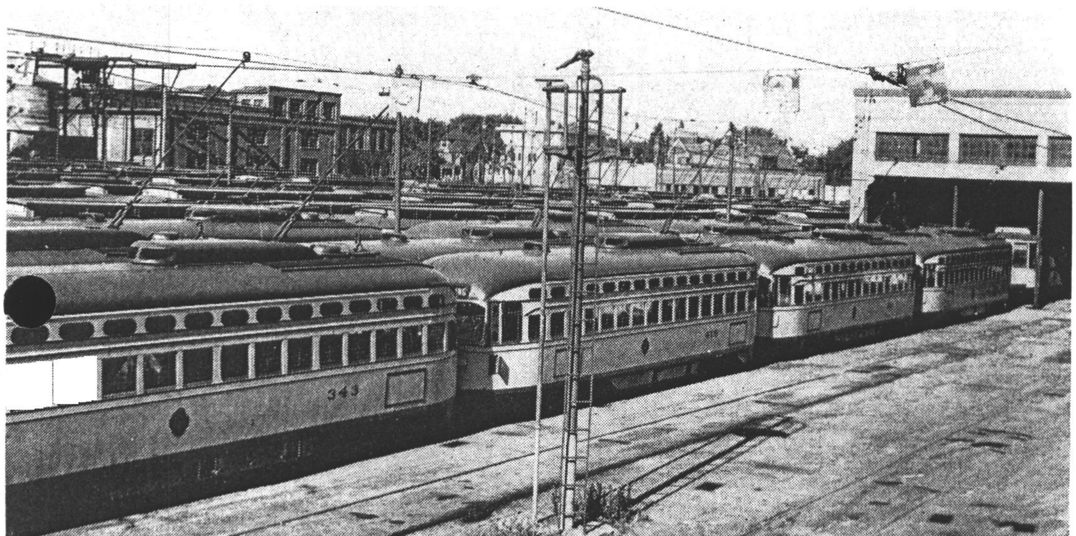
THE story of transit in the Twin Cities as of July, 1954 is an amazing account of rapid conversion from rails to rubber.

Three years ago 758 street cars still formed the backbone of the Minneapolis-St. Paul area transit system. Last month the last trolley clanged to a halt and the Twin Cities became one of the world's largest (and the first of 21 covered so far in our series) metropolitan areas to depend solely on automotive power for its mass transportation needs.

And the man in the driver's seat for this breakneck race to rubber tires (and black figures) has been Fred Ossanna, a lawyer turned transit man, whose herculean efforts we will come to later.

Area's History Dates Back to 1680

In 1683 Louis Hennepin, a French priest, carved the Arms of France into an oak tree on the bank of St.



1951

758 STREET CARS

351 BUSES

Twin City's former PCC cars now are running in Cleveland, Newark and Mexico City—and their old yellow trolleys are now in the scrap heap.

A stern-wheeler on the Mississippi and a Northwest Airlines Boeing Stratocruiser overhead decorate the St. Paul skyline.

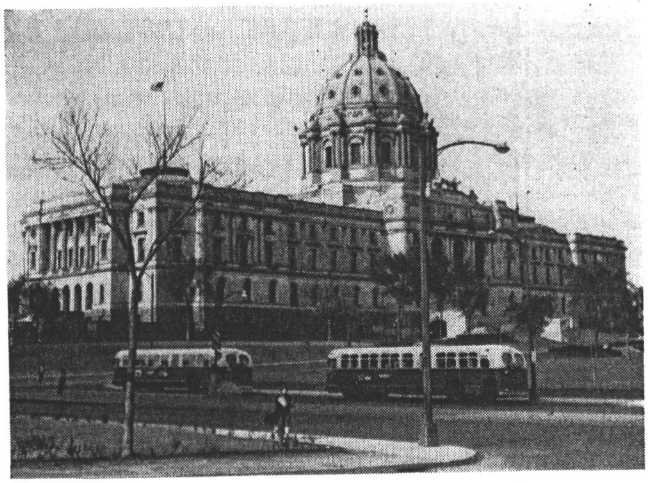
Changes Twin City Transit Picture

Anthony's Falls—the first white man to visit the area. After the Louisiana purchase in 1803, settlers began to come into the area—Zebulon Pike negotiating a treaty with the Sioux chiefs to obtain a tract of land for them. In 1820 Fort Snelling was built. Saw mills and flour mills were erected near St. Anthony's Falls and the village of St. Anthony became a thriving metropolis.

Around 1850 St. Paul officially replaced Pigs Eye as the name of the area to the east of the Mississippi River and Minneapolis ("city of falling water") was incorporated as a town. In 1858, when Minnesota became a state, St. Paul was made the capital.

St. Paul Had Horsecars in 1872

By 1870 Minneapolis was a major railroad center—and the city of St. Anthony became a part of Minneapolis in 1872. From that time on Minneapolis (to the northwest) and St. Paul (to the south east) have grown

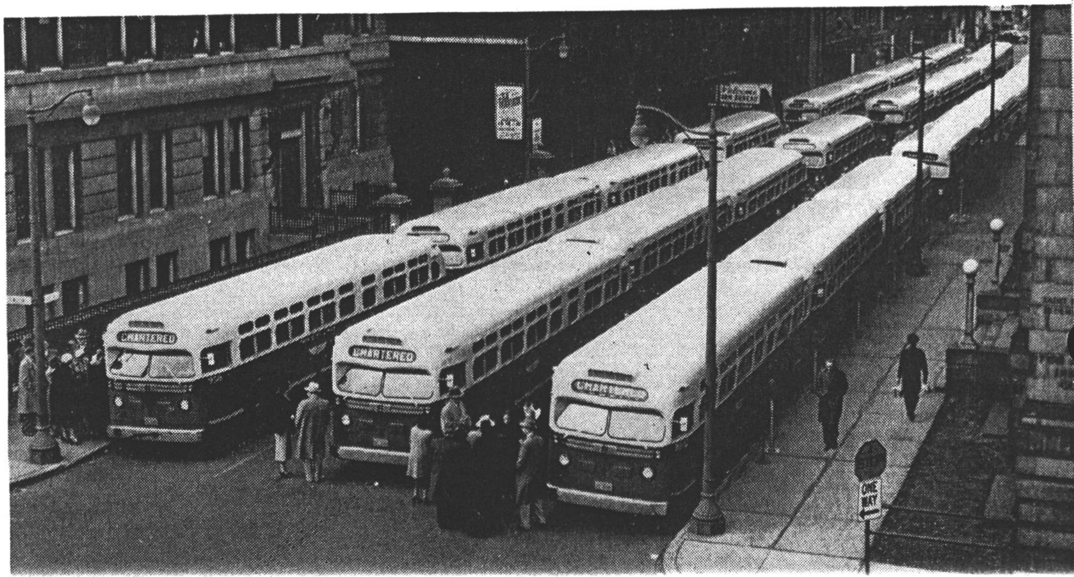


Two TCRT buses roll past Minnesota's stately capitol building (of white Georgia marble) in St. Paul—just a few blocks north of the city's downtown "loop" area.

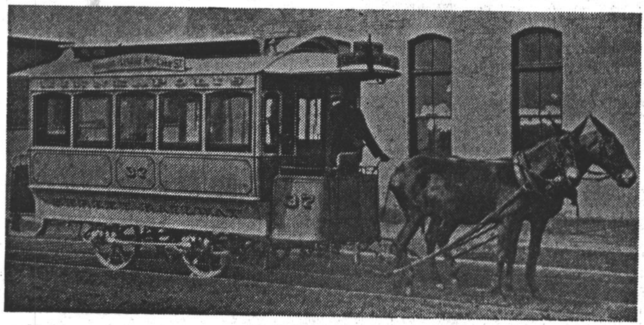
1954

838 BUSES

0 STREET CARS



Soon after their arrival, 30 of the new GMC diesels were lined up alongside the Auditorium for inspection by the public. Colors are red, blue and cream.



Horsecars were operated first in St. Paul in 1872—and then in Minneapolis in 1875.

as separate cities, their contiguous suburbs welding them into one vast metropolitan area.

Public transit in the area began on July 15, 1872 when the St. Paul Street Railway Company was formed—with six horse cars (called "cracker boxes on wheels" by St. Paulites), 30 horses and 14 drivers. Receipts averaged 50 dollars a day.

The following year in Minneapolis (where Dorilius Morrison, the city's first mayor, had organized a horse car company in 1867—only to fail before the line was opened) Colonel King and Thomas Lowry (whose name was to become synonymous with transit in the Twin Cities) founded the Minneapolis Street Railway Company—tho the lines were not opened until 1875.

Thomas Lowry Formed TCRT in 1884

The St. Paul company ran into financial trouble in the late 1870's and after several futile attempts at reorganization, was taken over by Lowry's Minneapolis property in 1882—and two years later the two companies were merged into the Twin City Rapid Transit Company which has been king pin in Twin City mass transportation, since that time (and, until recent years, under Lowry family direction).

In 1879 a competing company—the Minneapolis, Lyndale and Minnetonka "Motor Line"—opened a line from Bridge Square to Lake Calhoun using steam locomotives. In 1889, 1890 and 1891 three cable car lines and an experimental electric line were constructed. On February 22 the first line to be coverted to electricity was opened in St. Paul. Electrification of all lines followed rapidly, the cable materials being scrapped at a loss of $225,000.

In 1898 the company, unsatisfied with street cars purchased from car builders, designed two of its own—and for the following 48 years all TCRT cars were built in Snelling Shops, with as many as 550 men employed in the construction department.

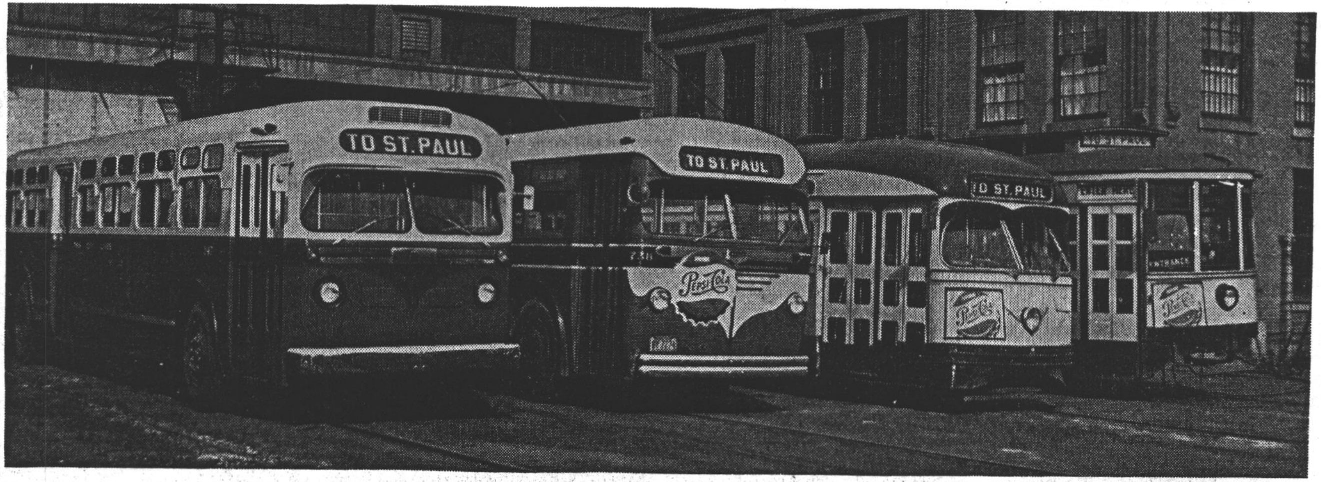
Comes the Revolution!

To the casual observer, the changes in the TCRT set up have come with dramatic suddenness. Actually they have their roots way back in the depression 30's when dividends were passed year after year and large blocks of locally held stock were disposed of and dispersed thruout the country. Then, in 1949—when TCRT was still hauling 165,000,000 riders in its 332 buses (mostly Mack gas jobs) and 777 street cars (including 141 new PCC cars)—Charles Green, a "city slicker" from New York, was carried into the president's chair long held by D. J. Strouse on the waves of a proxy fight.

And then, in 1951, the unpopular Green team bowed out and Fred Ossanna, a colorful Twin Cities attorney, took over. At that time the TCRT property was in perilous condition—losing money every month.

Ossanna and his new management team attacked immediately on four fronts—equipment conversion, tax reduction, service curtailments and better employee and public relations. And each campaign has been won.

Now, just 25 months after the first equipment move, where 724 street cars and 354 gas buses once ran, a fleet of 838 buses, many of them new GMC, air suspension diesels, now operates. Fighting for—and getting—relief on personal property, real property and license taxes has saved $700,000 in the same period. Nearly 400 miles of rail and overhead has been abandoned and service has been "tailored" to fit riding. And, thru the tireless efforts of Ossanna (in addressing civic groups at the rate of 400 talks a year!) and Dr. David Ellison (who not only runs an unusual medical and counselling



Equipment progress is shown in this picture showing (right to left) an old Snelling-built trolley car, one of the TCRT's 141 PCC cars, a post war Mack and one of the new 51 passenger GM diesels.

department but also directs such activities as the suggestion box and "driver-of-the-month" campaign), both public and employee relations have been greatly improved.

Ossanna Tells of Conversion

"Our main objective thruout this great effort," says Ossanna, "has been to make this transportation system the finest in the country. In less than 25 months we have been able to transform a sprawling, confused system, comprising 392 miles of rail and overhead wire and cable, 724 streetcars and 354 older type buses, into a modern engineered network served by the world's largest fleet of 51-passenger, air ride, diesel buses. This has been accomplished in four years—less time than outside experts predicted as a possibility."

D. Thomas Bergen (left), one of the directors of the New England Historical Society, accepts title to old yellow trolley No. 1267 from TCRT President Fred Ossanna while Barney Larrick performs the ceremony.

This summary of Twin City Rapid Transit Company operating statistics shows how the company has changed over the past 15 years:

	Cars	Buses	Riders	Fare	Wage
1939	715	130	104,388,147	10c	$ .75
1940	713	141	104,313,619	10c	.75
1941	704	162	105,941,868	10c	.80
1942	704	206	128,924,943	10c	.87
1943	704	228	173,280,097	10c	.95
1944	704	203	185,222,547	10c	.95
1945	703	196	193,739,036	10c	.95
1946	743	203	201,527,022	10c	1.02
1947	775	284	198,921,195	10c	1.22
1948	773	349	188,408,206	11c	1.40
1949	777	332	165,550,924	12c	1.52
1950	773	356	140,441,387	15c	1.52
1951	758	351	125,259,681	15c	1.70
1952	661	509	112,795,149	15c	1.80
1953	295	733	94,933,390	20c	1.89
1954	0	838	————	20c	1.94

Looking back to 1951 when he moved in, Ossanna declares, "We took over a system with heavy debt structure, inequitable tax burdens, obsolete franchises, multiple public controls, vehicles running almost empty over sprawling lines, and inadequate rate structures. Labor and public relations were also at the lowest ebb. This management had an abiding confidence that a favorable public opinion would result once all the facts were disclosed. Never in the history of the Twin City Rapid Transit Company have the facts been so frankly and fully presented to the public in such a short period. In newspapers, public hearings, judicial proceedings, and in hundreds of public appearances, the facts were told. In all of its hearings before the public bodies, just relief was granted, and in every legal action the Supreme Court has sustained the fairness of the company's position."

Conversion Costs and Profits

The conversion involved a tremendous expenditure of millions of dollars for new equipment and housing facilities, as well as many millions more in settlement of franchise obligations and the absorption of abandonment losses. Here are the figures:

New buses purchased or leased	$11,192,019
Used buses purchased	416,344
New garages	1,099,777
Additional garage facilities planned	900,000
Settlement of franchise obligations for maintenance, track removal and repaving	1,277,790
Losses due to abandonments	12,490,944
	$27,376,874

Commenting on the conversion, John Seidel, President of the Amalgamated's Local No. 1005, declares:

Barney Larrick, long known as "the Will Rogers of the transit industry," is Vice President and General Manager of TCRT. Coming from the coal country of Southern Ohio, Barney started his own bus business, sold out to the Fitzgeralds and joined them himself—getting his great transit "know how" with NCL.

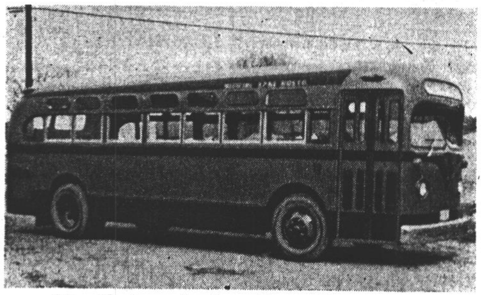
Northland Greyhound Lines

Anoka-Minneapolis Bus Company

Columbia Transit Corporation

NORTH HENNEPIN TRANSIT CO

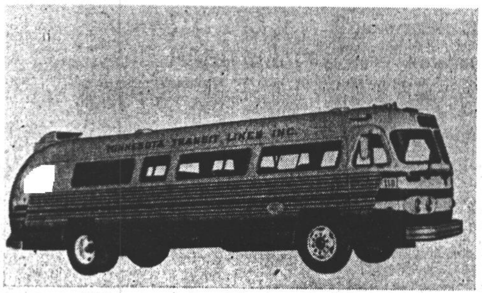
North Hennepin Transit Company



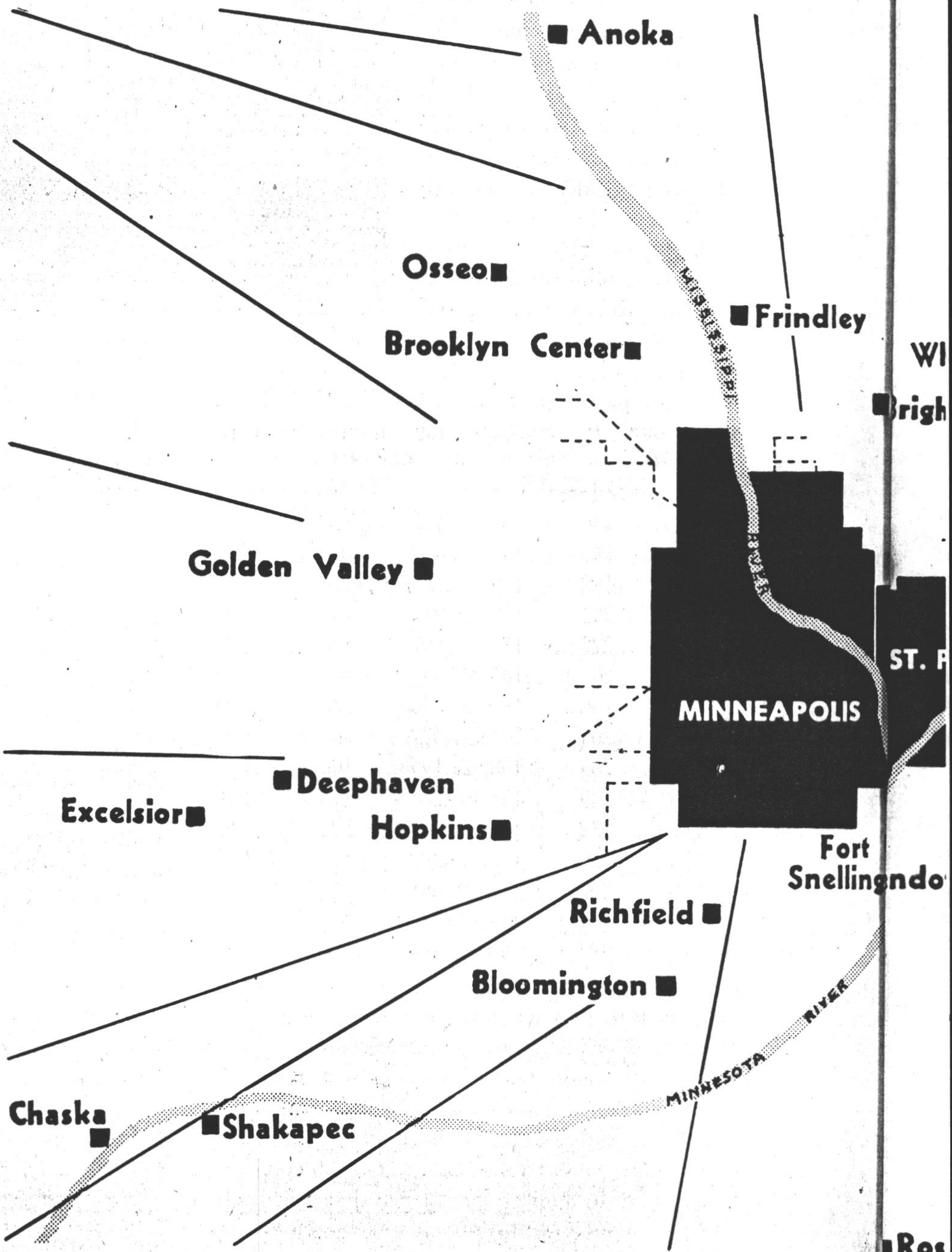
Medicine Lake Bus Company

DEEPHAVEN BUS CO. INC.

Deephaven Bus Company


MINNESOTA TRANSIT LINES INC.

Minnesota Transit Lines


Anoka
Osseo
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Brooklyn Center
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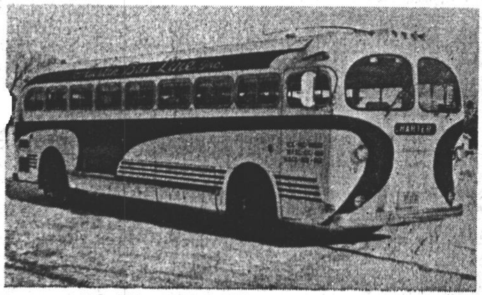
Brigh
MISSISSIPPI RIVER
MINNEAPOLIS
ST. P
Golden Valley
Deephaven
Excelsior
Hopkins
Fort Snellingndo
Richfield
Bloomington
MINNESOTA RIVER
Chaska
Shakapec
Ros

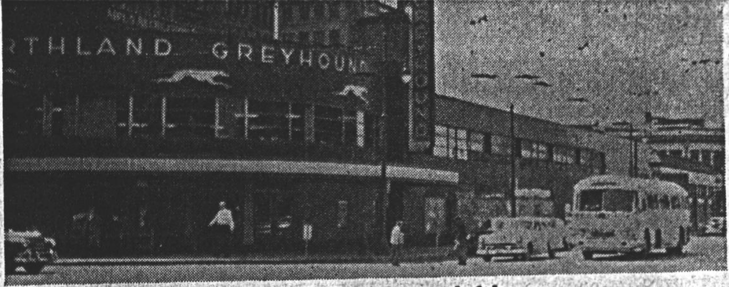


Hi-Way 56 Transit Lines

Bloomington Bus Company

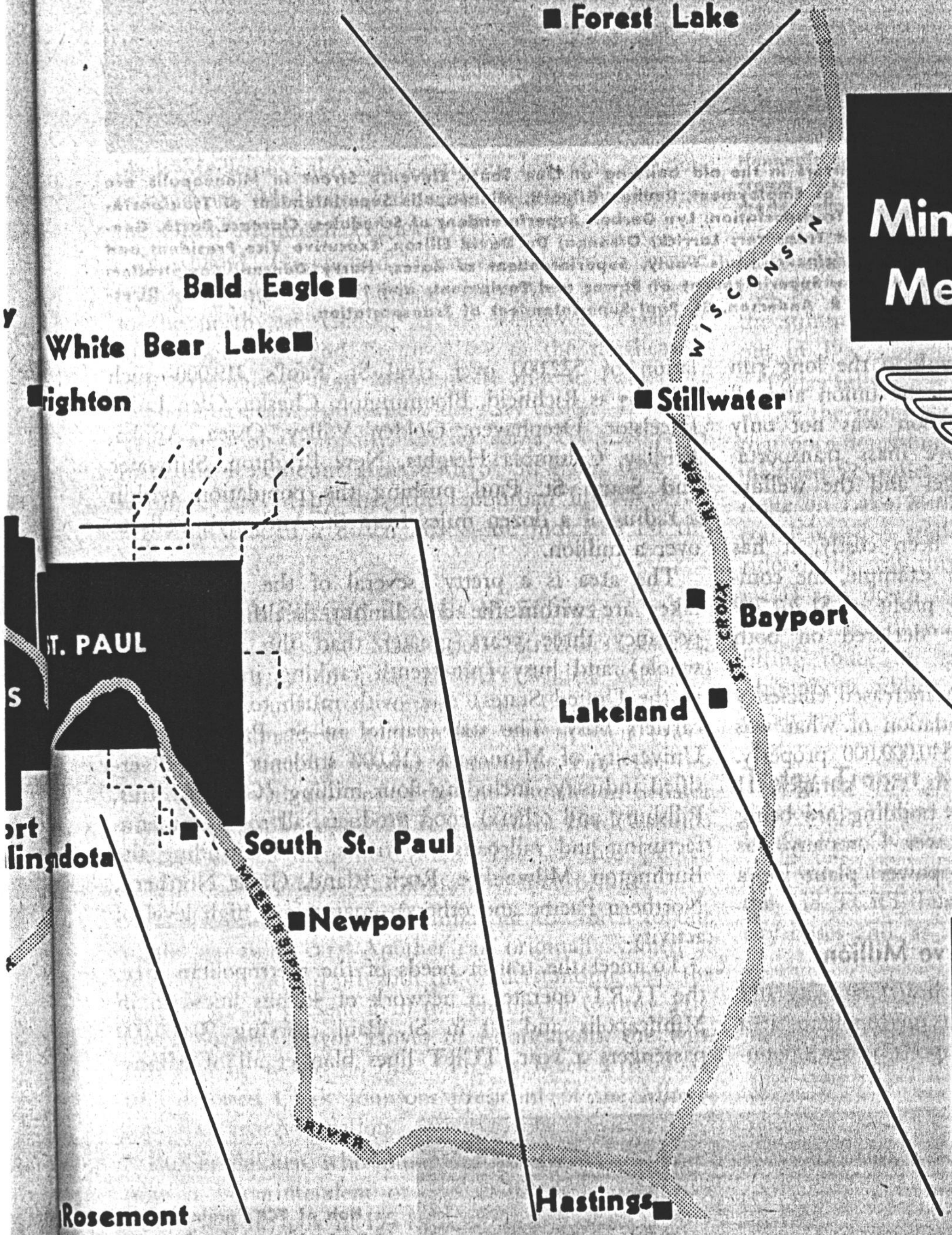
Minneapolis & Suburban Bus

Stillwater-Minneapolis Bus Company



Northland Greyhound Lines

Transit in the Minneapolis- St. Paul Metropolitan Area


Forest Lake
Bald Eagle
White Bear Lake
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righton
Stillwater
WISCONSIN
ST. CROIX RIVER
Bayport
Lakeland
ST. PAUL
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South St. Paul
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lingdota
MISSISSIPPI RIVER
Newport
Hastings
Rosemont
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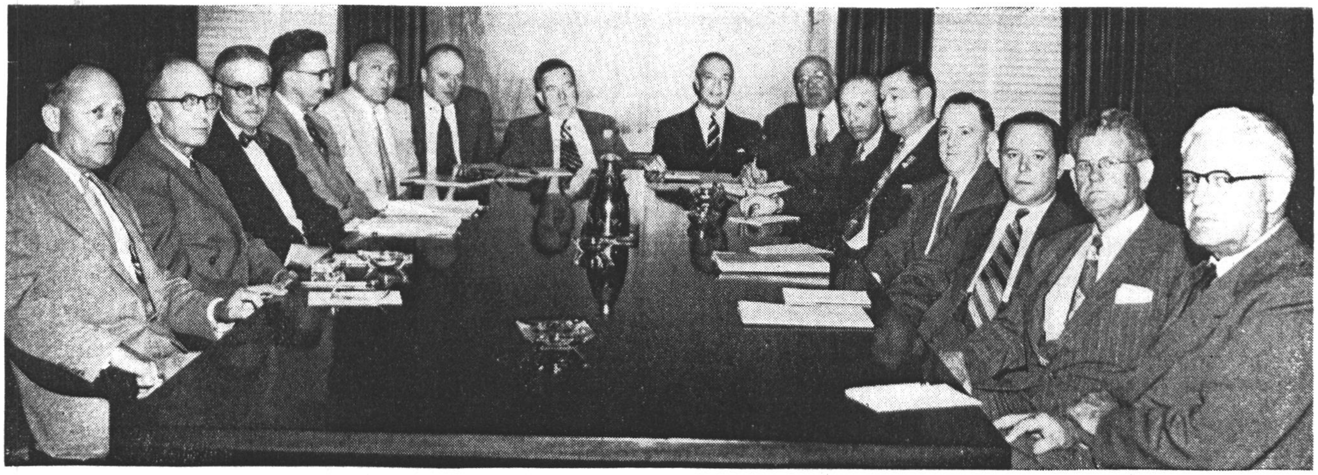
St. Croix Bus Company

Bus

Jefferson Lines

North Star Bus Company

Zephyr Lines



Seen here at a staff meeting at TCRT headquarters in the old building at One South Eleventh Street in Minneapolis are (left to right): Clifford Severson, Superintendent of Employment, Reuben Gilyard, Minneapolis Superintendent of Transportation; Luther Bakken, General Superintendent of Transportation; Lyn Gerber, Superintendent of Schedules; Clarence Barto, General Claims Manager; James Towy, Secretary and Treasurer; Larrick; Ossanna; Dr. David Ellison, Executive Vice President and Medical Director; William Clark, Maintenance Engineer; Louis Pauly, Superintendent of Buses; Harry Duncan, Comptroller; Joseph Drugacs, Purchasing Agent; Frank Morgan, Superintendent of Power and Equipment; and Harry Castor, Safety Director. Missing when this picture was taken was F. R. Anderson, St. Paul Superintendent of Transportation.

"We believe that this conversion will in the long run prove to be in the best interests of the union and all concerned. We believe the conversion was not only necessary to continue and improve mass transportation, but also to protect the wages and the welfare and pension benefits."

But, while the conversion has been costly, it has also been profitable. Last year, for example, the company's books showed an operating profit of $1,261,769 before taxes, and dividends were declared on both the common and preferred stock.

The profit has come partly from increased efficiency in operation and partly from liquidation of what was once carried on the books as a $40,000,000 property. In Minneapolis two street car barns, two garages, 11 substations and a downtown office building are being sold and the Northern States Power Company has purchased the transit company's power plant at a price of $1,500,000.

TCRT and Suburban Lines Serve Million

Today, the Twin Cities Rapid Transit Company and several suburban bus lines serve a metropolitan area population of over a million. Minneapolis boasts a population of 522,000 over rival St. Paul's 319,000—such suburbs as Richfield, Bloomington, Chaska, Glen Lake, Excelsior, Deephaven, Golden Valley, Ossea, Anoka, Fridlay, Columbia Heights, New Brighton, Stillwater and South St. Paul pushing the population within a radius of a dozen miles from St. Anthony's Falls to over a million.

The area is a pretty (several of the states' 10,000 lakes are within the city limits), healthful (life expectancy three years greater than the nation as a whole) and busy (nineteenth ranking industrial city in the United States) one—with much to keep transit carriers busy. The state capitol in St. Paul, the vast University of Minnesota (18,000 students) and diversified industry—including flour milling (General Mills, Pillsbury and others) food products, all sorts of manufacturing and railroads (10 trunk lines including the Burlington, Milwaukee, Rock Island, Great Northern, Northern Pacific and others)—maintain a high level of activity.

To meet the transit needs of the metropolitan area, the TCRT operates a network of 46 bus lines—26 in Minneapolis and 20 in St. Paul carrying 90,000,000 passengers a year. TCRT lines blanket all of Minne-

Hub of TCRT maintenance operations is the vast Snelling layout in St. Paul. Here Larrick found another "Sleepy Hollow" and, with the passing of rail operation, dismemberment will probably come quickly. The building and acreage shown at right are already set for sale—for possible conversion into a supermarket.

apolis and St. Paul—and fan out into several suburban areas as shown in the map on pages 36 and 37.

Suburban Bus Lines Ring City

Several million more do their commuting on the buses of the more than a dozen suburban lines shown on the map on pages 36 and 37.

One of the most important suburban operations is the Anka-Minneapolis line which last year carried 448,000 riders on its 15 blue and white buses (three Flxibles, three Yellow Coaches, three Fitzjohns and six Fords). Coming in from Anoka to Minneapolis (along a route begun as a trolley line in 1912), the company has operated buses since 1939.

Nearly 200,000 riders used the eight orange and black Medicine Lake Bus Company last year to commute from Medicine Lake and Golden Valley on the Olson Memorial Highway.

Northland Greyhound operates suburban service from all points of the compass—from Anoka and Osseo to the northwest, Chaska to the southwest, Hastings to the southeast and Forest Lake to the northeast—into terminals in both Minneapolis and St. Paul.

The area's other prominent intercity carrier, Jefferson Transportation Company, carries some commuters in from the Rosemount area south of St. Paul. And the territories served by the other suburban lines—operating from one to a dozen buses—are indicated on the map.

Street Car's Passing Recalls Memories

Eight of the last Minneapolis streetcars making their final trips on June 18 were loaded with 320 civic leaders and businessmen. While the cars wound thru the Minneapolis loop on the way to their graveyard at the Snelling Avenue shops in St. Paul, the riders were served an "end-of-the-line" luncheon. Senator Hubert Humphrey and TCRT president Fred Ossanna beamed under their motorman's hats as they piloted a 1914 trolley across Washington Avenue bridge.

At the Snelling shops Ossanna put the torch to one of the old street cars. Another car, originally valued at $25,000, was raffled off with the understanding that the winner would present it to the Hennepin County Historical society. Mayor Hoyer of Minneapolis, the winner, said he would do this. "This is Black Friday for us," declared Clark Johnson, President of the Minnesota Railfans Association.

Luther Bakken, who joined the company in 1912 and now is Superintendent of Transportation, recalls one time when he took in 155 fares on a car hauling a Sunday horde to Minnehaha Falls. The company used to run a streetcar-every-minute service between Minnehaha Falls and Lake Harriet, with the trolleys packing crowds in for the afternoon band concerts at Minnehaha and the evening concerts at Harriet. A breezy ride to 'Tonka was a favorite way for many to beat the summer heat on a weekend, before the line went out in 1932.

TO MINNEAPOLIS
TWIN CITY LINES
1286

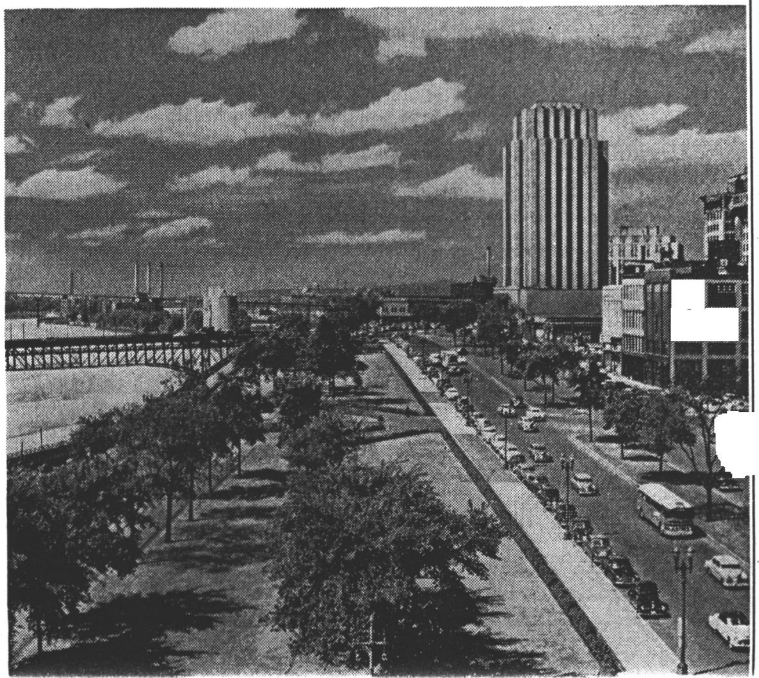
Twin City Rapid Transit now boasts the largest fleet of General Motors 51-passenger "air suspension" diesels now in service anywhere—and the statue of Thomas Lowry at Hennepin and Lyndale looks down on these big red, blue and cream buses (and swarms of autos) instead of his home-made yellow cars.

Today only a few road bed mounds, fast disappearing under the suburban housing boom, remain as relics of that once-flourishing trolley network which at one time included 523 miles of track and 22 miles of express boat route on Lake Minnetonka. Time was when a person could board a trolley in Excelsior or Deephaven and ride all the way thru Minneapolis and St. Paul to Stillwater and down to Bayport!

"My first ride was on the Oak-Harriet line so it's a fitting route for my last ride," observed Senator Humphrey, adding, "It's progress—but it's also the end of an era."

Today Transit Rolls on Rubber Tires

Looking down from either Foshay Tower or St. Paul's First National Bank Building, all you can see on Twin Cities streets is rubber-tired transit—including the 838 TCRT buses, maybe 200 suburban and intercity buses and, as always just too darn many autos.



A Northland Greyhound bus rolls along Kellogg Boulevard beside the Mississippi River with St. Paul's striking city hall rising in the background.

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Board of Directors
1956

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President, Elmer N. Olson Company, Minneapolis.

Fred A. Ossanna, President
President, Twin City Rapid Transit Co.

David E. Ellison, M.D., Executive Vice President
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AVERY® PV119ED

Gangsters, buses and GM: Did they rub out streetcars?

Editor's note: There has been increasing discussion recently about building a light-rail transit system to serve parts of the Twin Cities. The area once had such a system — streetcars. Following is a new view of how that system died. For more information on streetcar systems, see today's Perspective page. Page 7A.

By Roberta Walburn
Staff Writer

The year is 1952. The Twin Cities streetcar system, once one of the finest in the nation, is being swiftly dismantled.

So swiftly, they can't give the cars away fast enough.

"Want a streetcar?" a newspaper asks in a photo caption. "You can have it for the taking." The offer comes from the president of the streetcar company.

■

What killed the streetcar?

The end of the streetcar era here has been explained in terms of declining passenger interest and replacement of an outmoded electric transit system with buses.

And gangsters.

While rails were being ripped out of city streets and streetcars were being given away, burned and scrapped, there were highly publicized charges that gangsters — including Isadore (Kid Cann) Blumenfeld — had taken over the transit company. Their goal? Strip the company of its assets and take off with the money.

Some of the streetcars also were sold off during those years. Many of them, more than two decades later, are still running in other cities.

Kid Cann eventually was tried, along with streetcar company executives and area scrap dealers, on charges of defrauding the streetcar company.

But there also was another force at work then that didn't grab the headlines: General Motors Corp.

General Motors — manufacturer of automobiles, a streetcar competitor; manufacturer of buses, a streetcar competitor — played a crucial role in the fast conversion of streetcars to buses here.

General Motors did this with its money and with its expertise.

It has been accused, most notably in a report to the U.S. Senate's Subcommittee on Antitrust and Monopoly, of destroying streetcar systems in other cities in order to promote the sale of its buses and cars. The Twin Cities were not mentioned in the study.

The report quoted a general counsel for General Motors:

General Motors "decided that the only way this new market for buses could be created was for it to finance the conversion from streetcars to buses in some small cities."

The report was a study of how a dominant corporation, often moving in a straightforward, maximize-profits business manner, may at the same time be moving against the public interest.

■

"This is not a study of malevolent or rapacious executives," the report says.

"Whether that firm's executives in the 1920s actually intended to construct a society wholly dependent on automobiles and trucks is unlikely and, in any case, irrelevant. That such a society developed in part as the result of General Motors' common control of competing ground transport industries is both relevant and demonstrable."

At its peak the Twin Cities' streetcar system ran more than 1,000 cars over more than 500 miles of track. Until 1949 it was known for its solid management and aggressive promotion of the streetcar system.

But in 1949, after a fierce battle among stockholders, a new management took control of the Twin City Rapid Transit Co. (TCRT). The last streetcar ran five years later.

And, where the old management had boasted about operating one of the finest streetcar systems, the new management began to boast about directing one of the fastest streetcar-to-bus conversions in the country.

■

"We are not coming here with the sole desire of milking the company," Charles Green, a New York financier who led the takeover, said in 1949.

■

Despite Green's words of assurance, the new management immediately begins to undermine the strength of the transit company and the streetcar system.

It starts to lop off streetcar lines and runs. Many of the cuts come in the middle of the Minnesota winter, leaving bewildered passengers standing out on cold corners. Those who do catch a car complain of crowding. A newspaper runs a letter to the editor: "Complaint from a sardine."

In its first year the new management more than doubles officers' and directors' salaries, all the while complaining of a weak financial position and petitioning for higher fares. In its second year, management pays a dividend for only the second times in 20 years. Previous management had made it a practice to reinvest earnings in the company for the upkeep and upgrading of the streetcar system.

But one of the quickest moves of the new management is to hire a company to survey its system as the streetcar company deliberated switching to buses. This is done within a month or two after the takeover.

The consultant: General Motors.

"We will be guided by them," said James A. Gibb, TCRT executive vice president, to the St. Paul City Council.

Gibb is one of the executives brought in by the new management. He has been working for a bus company in Lansing, Mich. Before that he worked for General Motors for 13 years as a cost accountant and auditor, according to the Lansing State Journal.

■

Before this point, one of the more serious threats to streetcars in the Twin Cities had come from . . . the bicycle.

A bicycle craze hit the cities in the 1890s; bicycles crowded downtown streets during rush hour.

Streetcar revenues fell. At one point, some streetcar directors borrowed funds from friends and associates to keep the system going.

■

In the early 1950s TCRT seeks capital to buy the buses that will replace the streetcars. But Twin Cities bankers turn the company down.

TCRT has enough money available to buy about 25 diesel buses, and it approaches General Motors about a purchase.

General Motors makes an offer. It will extend credit, allowing TCRT to buy 525 General Motors buses, according to an article published by TCRT. That's all the buses TCRT needs to convert its entire system.

(John W. Sibley, a General Motors attorney, said in a recent telephone interview that he could find records of General Motors lending more than $7 million for the purchase of 400 buses in the Twin Cities. Further records were not immediately available, but Sibley said it was "entirely possible" that General Motors also was involved in financing 125 more buses).

TCRT sells some of its streetcars for scrap. Newer cars, which were bought after World War II, not long before the management change, and which were the best in the industry, are sold to Mexico City, Newark, N.J., and Shaker Heights, Ohio, a Cleveland suburb.

All three cities still run many of the cars they bought from the Twin Cities.

■

"They're still running and in magnificent condition," said Anthony Grazioso of Transport of New Jersey. "No graffiti, nothing."

The New Jersey company, which operates a 4.1-mile light rail system in Newark, bought 30 streetcars from the Twin Cities in the early 1950s. It has since sold two and scrapped two. The rest are still being used; in fact the entire Newark light-rail system is run with old Twin Cities cars.

"We could keep running them for another 30 years," said Grazioso.

The two cars Newark sold went to Shaker Heights, which wanted to add to the 20 streetcars it bought from the Twin Cities in the 1950s. That sale was in 1977, and the purchase price was $50,000 a car. In the 1950s, Shaker Heights had paid from $20,000 to $25,000 a car, according to Robert J. Landgraf of the Greater Cleveland Regional Transit Authority.

He said he periodically gets letters from Minnesota streetcar aficionaawdos who say they'd like to buy a TCRT streetcar if his company is going to scrap any.

No way, said Landgraf.

"We just love those cars."

Mexico City is still using at least half of the 91 cars it bought from the Twin Cities, said Benjamin Navarro Cardenas, comptroller for Transportes Electricos del Distrito Federal. The cars, which are used within the city limits, will have to be replaced within about five years, he said.

■

In 1952, to oversee its conversion to buses, TCRT hires B.M. Larrick.

Larrick does not want for experience. He has already been involved in streetcar conversions in a number of cities.

His arrival causes a big shakeup at TCRT, with key veteran executives quitting amid reports of policy disputes.

Larrick had made his reputation in Los Angeles, where he directed the conversion of streetcars to buses. Some critics point to Los Angeles as the most notorious example of destruction of a streetcar system by General Motors.

TCRT management had sought General Motors' advice on whom to hire, and Larrick was one of the names it gave, according to General Motors attorney Sibley.

In Los Angeles, Larrick had worked for National City Lines, a company founded in 1936, in part with money from General Motors. More money came later from Standard Oil of California and Firestone Tire & Rubber Co., according to the Senate report.

The report, "American Ground Transport," was presented to the Senate in 1974. It was written by Bradford Snell, then a staff attorney for the antitrust subcommittee. He spent five years working on the report. He has spent the last five years expanding the research for a book that will be published this year.

Here is the scenario Snell describes in the study:

General Motors first began to acquire and scrap electric transit systems to create a market for its buses. The company stopped this direct acquisition program in 1935 after it was censured by the American Transit Authority for, as Snell put it, "its self-serving role."

General Motors didn't completely stop its effort to replace streetcars, the report says. It changed tactics and began to work more indirectly.

One of General Motors' moves was to help National City Lines get started. National City Lines then began to acquire streetcar companies and convert the systems to buses.

In 1949 in Chicago, General Motors was convicted, along with National City Lines, Standard Oil of Califor-

nia, Firestone Tire & Rubber Co., Phillips Petroleum Co. and Mack Manufacturing Corp. of conspiring to monopolize interstate transit in 45 cities. In upholding the conviction, the court of appeals wrote that the manufacturers and oil companies had furnished financing to National City Lines to purchase local transit companies to "further the sale of and create and additional market" for their products. In return for their capital, the manufacturers secured exclusive contracts so that their products would be the only ones used by transit systems owned by National City Lines.

General Motors was fined $5,000. The company's treasurer, also convicted as an individual, was fined $1.

The companies were acquitted on a second part of the indictment — conspiring to secure control of local transit companies.

The Snell report said that "by 1949, General Motors had been involved in the replacement of more than 100 electric transit systems with GM buses in 45 cities including New York, Philadelphia, Baltimore, St. Louis, Oakland, Salt Lake City and Los Angeles."

The report recommended that the automobile industry's power and dominance be ended by reorganizing the big companies into smaller units.

■

Fears of monopoly control of transit — this time not involving General Motors — grew in the Twin Cities in the 1920s. This time the monopoly effort was at least partially thwarted.

Several bus companies had begun to operate in the cities. TCRT, wanting to control all public transportation, bought out the competing bus lines.

The company also bought all of the taxi companies.

The Minneapolis and St. Paul city councils, worried about TCRT playing too dominant a role in transit, forced the company to sell the taxis.

General Motors has attacked the Snell report.

"Although the accusations against General Motors appear to be detailed and complex, their truth can be tested ... by examining the fundamental claim on which the whole argument turns," General Motors wrote in a reply to the report. "If the street railway systems in this country were not the thriving and effective enterprises that the author claims, then their demise can hardly be blamed on General Motors and their return can hardly be the panacea for the future."

" ... Street railways failed for economic and demographic reasons which had nothing to do with any plot by General Motors," the company wrote in response to Snell's report.

It is true that the streetcar system had certainly passed its peak here before General Motors entered the scene.

Passenger traffic hit a high of 226 million riders in 1922 and then declined until the 1940s. In that decade there was somewhat of a turnaround, and in 1946 there were 201 million streetcar riders. Then traffic started to fall again. In 1949, when TCRT management changed, there were 165 million transit riders.

But rail enthusiasts argue that, while it was not practical to keep the entire TCRT streetcar system, it was certainly not necessary to scrap the whole works. A combined streetcar-bus system may have served the cities well, with buses moving passengers to streetcars running along the most heavily traveled routes.

In fact, as the Metropolitan Transit Commission struggles now to cope with an increasing passenger load brought on by the energy crisis, there is increasing talk about building a light-rail transit system to serve some of the well-traveled corridors.

But the General Motors view of General Motors involvement is that "General Motors provided some capital to mass transportation systems which had nowhere else to turn."

Environmentalist Barry Commoner, in "The Poverty of Power," looked at the role of General Motors differently. Pointing to the Los Angeles streetcar conversion, he wrote:

"This case history does appear to confirm the hypothesis that the tendency of the U.S. transportation system to favor inefficient modes of transportation derives from the effort of transportation companies to maximize their profits in preference to improving the performance of the transportation system."

■

The profit motive has not always worked against a good mass transit system.

Thomas Lowry, founder of the Twin Cities streetcar system in the 1880s, was a real estate dealer. One of his purposes in promoting streetcars was to take potential buyers out to view vacant lots he owned on the outskirts of town.

But Lowry also believed in building a good transit system, and by all accounts he did. So prominent was his role in promoting transit that for years streetcars in the Twin Cities were called "Tom Lowrys."

■

Gangsters!

They're very much on the minds of officials investigating TCRT in the early 1950s, the first years of streetcar abandonment and public outcry.

The Minnesota Railroad and Warehouse Commission studies TCRT and reports in 1951 that gangsters, including Kid Cann, own about 16 percent of TCRT stock. (Kid Cann had large stock holdings in other companies during that period, including Montgomery Ward, North American Aviation Co. and General Motors.)

In 1960, six men go on trial on fraud charges relating to the scrapping of the Twin Cities' streetcars.

Two of the defendants are former TCRT officers, Larrick and Fred Ossanna, former company president.

Two are scrap dealers. One is a real estate dealer.

And one is Kid Cann.

There are three parts to the prosecution case, which deals generally with selling off TCRT assets at below market price in return for payoffs. One is the charge that hundreds of thousands of dollars worth of scrap, from streetcars, cable and 400 miles of track, was sold at deflated prices. Another charge is that TCRT was defrauded of more than $250,000 in the sale of 91 streetcars to Mexico City. The third charge involves the sale of several million dollars worth of streetcar power plants, barns and rights of way.

The total loss to TCRT was about $1 million, the government charges.

All of the defendants are convicted on some of the charges, except Kid Cann, who is found not guilty on all 10 charges he faced.

(Kid Cann was later convicted for white slavery and attempted jury tampering and was sent to a federal prison in Missouri in 1961. When he was paroled 3½ years later he went to live in Miami Beach, where he had large real-estate interests — and where he still lives).

"I didn't see it as being a gangster-dominated operation," Hyam Segell, one of the prosecutors, said recently. He is now a district judge in St. Paul.

There have never been allegations that General Motors was involved in the illegal scrapping of streetcars.

Leonard Lindquist headed the Minnesota Railroad and Warehouse Commission when it investigated TCRT in the early 1950s. He concentrated his investigation on gangster involvement in TCRT.

Lindquist now practices law in Minneapolis. He recently talked about his days on the commission, and of the frustrations there.

Despite his work — in the face of threats that forced him to move his family from an isolated house in Brooklyn Center to an area of Minneapolis that was better protected — Lindquist said his efforts were frustrated by a lack of support.

"There was not enough of the public who really gave a damn," he said.

■

Two parting views on General Motors and its role in the ending the streetcar era:

■ From Snell's report:

"By the 1950s, it (General Motors) could lay claim to having played a prominent role in the complete replacement of electric street transportation with diesel buses. Due to their high cost of operation and slow speed on congested streets, however, these buses ultimately contributed to the collapse of several hundred public transit systems and to the diversion of hundreds of thousands of patrons to automobiles."

■ From a General Motors statement:

"General Motors did not generate the winds of change which doomed the streetcar systems; it did, however, through its buses, help to alleviate the disruption left in their wake."

Attorney Sibley had a word for what General Motors actions brought about for Twin Cities mass transit:

"Salvation."

(Material for this article also was supplied by Michael Flaherty, a reporter for the Mankato Free Press).

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TCRT Co.
1962 changed name to
Minnesota Enterprises Inc
1970 again changed to
MEI Corp.
1970 sold to MTC

ST. PAUL PIONEER PRESS 3-17-97

BUS BAILOUT.

Carl P
ing the
system

STEVEN DORNFELD
ASSOCIATE EDITORIAL PAGE EDITOR

Despite the hundreds of news stories that have been written on every conceivable aspect of the Twins stadium issue, one important historical fact has gone unmentioned:

This is not the first time Carl Pohlad has looked to the taxpayers for a helping hand.

In 1969, Pohlad and his lieutenants precipitated a crisis that led to the public acquisition of the region's failing bus system, Twin City Lines. Twin City Lines was then owned by MEI Inc., in which Pohlad was a top corporate officer and shareholder. The crisis was a 25-day drivers' strike at the start of the Christmas shopping season that had retailers banging on the door of then-Gov. Harold LeVander.

Management brought on the strike by refusing to offer the drivers more than a token raise. But union leaders may have been happy to cooperate, since they saw public ownership as the route to more generous raises and benefits. The strike was settled only after LeVander intervened and helped negotiate a settlement. Under the terms, the Metropolitan Transit Commission agreed to supplement Twin City Lines' salary offer and take over the company.

The deal was not altogether friendly. The MTC, now a part of the Metropolitan Council, acquired the company through condemnation. But when it was over, the taxpayers ended up paying $7.9 million for a bus company with an outdated, unreliable fleet; declining ridership; and a huge unfunded pension liability.

Pohlad, an up-and-coming Minneapolis banker, was not terribly visible at the time. A former state senator named Daniel Feidt was the board chairman of MEI, and transit general manager S.A. Caria played the role of public "bad guy." But observers believe Pohlad called most of the shots. He was listed in various MEI annual reports as vice chairman of the board, a member of the three-person executive committee and vice president of the company.

Les Bolstad Jr., a Minneapolis stockbroker who was the MTC's first chairman, credits Pohlad with executing "a very strategic, well-thought-out plan" that enabled MEI to avoid bankruptcy and emerge with a fist full of cash that no private buyer would ever have offered.

"It wasn't a random or accidental event," he says. "It wasn't just a roll of the dice."

Pohlad to the rescue

Pohlad became an owner of the Twin City Rapid Transit Co. in 1959. He was among a group of local business leaders who stepped in after the former company president and four associates were convicted of defrauding TCRT during the streetcar-to-bus conversion period, 1952 to 1957.

But upgrading the bus fleet and improving service did not appear to be high on the new owners' agenda. Instead, management did a remarkable job of maintaining steady operating revenues and profits through a combination of fare increases and service cuts.

MTC files show the company consistently had $13 million to $14 million a year in operating revenues during the years 1960-69 and had net income of $6.35 million during this period.

By 1962, TCRT had changed its name to Minnesota Enterprises Inc. and embarked on a program of "diversification." Within a few years, bus revenues were used to help acquire the Hotel Tropicana in Los Vegas and 41-percent interest in Texas International Airlines (which later merged with Continental). During this period, MEI annual reports listed Pohlad as chairman of its Investment Committee.

By the late 1960s, MEI was coming under increasing criticism from the MTC and others for its management of the bus company. "No. 1, they weren't putting any money into the bus system," says Bolstad. "No. 2, they were raising fares. And No. 3, they were channeling the money into other investments."

,Officers of the company responded at the time that transit did not provide an adequate return for the investment required. "Private capital cannot realistically meet the long-term needs of a large metropolitan region," one said.

In 1969, the Minnesota Public Service Commission grudgingly approved a 5-cent bus fare increase sought by Twin City Lines. But the commission found that the company had "not fully utilized the earnings of the transit operation in the interests of the transit riders."

The commission directed Twin City Lines to stop "the practice of transferring all cash to the parent company (MEI) as soon as it is received," and ordered the company to return in six months with a plan "for the orderly improvement of the bus fleet."

By then, MEI had concluded that its best bet for a painless exit from the transit field was public acquisition, then a nationwide trend in the industry. Bolstad and others say Feidt was active behind the scenes in persuading the Legislature first to create the MTC in 1967, and then to give it condemnation powers in 1969.

Relucant buyers

Bolstad recalls that the MTC included a number of conservative Republicans who were not enthused about the idea of government taking over a private company. And at least twice, Bolstad says, Gov. LeVander had met with him to express similar sentiments.

But the Republican governor and the MTC were forced to act after the drivers went on strike in mid-November, just as the Christmas shopping season was getting underway. Under pressure from downtown retailers in Minneapolis and St. Paul, LeVander called the parties together and helped negotiate the settlement that included an agreement for the MTC to acquire the company.

Dean Fenner, then an MTC commissioner and a member of the agency's negotiating team, says Pohlad stayed in the background during the bargaining. But he says the company's representatives included Donald Benson, Pohlad's right hand man at MEI, and that Pohlad sent several "backdoor messages" through one of the MTC commissioners.

At one point, Bolstad says, the MTC extended a $9 million offer for the company, but the agency

ohlad is credited by many with engineer-
1970 public acquisition of the failing bus
then owned by Pohlad's firm.

TO ST. PAUL
ST PAUL MINNEAPOLIS
1715

In 1970, when the MTC took over the bus company, its fleet was dominated by aging buses purchased in the mid-1950s at the end of the streetcar era. In the photo above, patrons transferred from a bus to a trolley in 1953.

In 1959, members of the bus company's new board of directors toured the bus garage and observed a mechanic at work. The directors included, from left, E.L Murphy Jr., Daniel Feidt, George Dayton and Carl Pohlad.

yanked the offer from the table after discovering the bus company's unfunded pension liability.

In 1970, the commission moved to acquire the company through condemnation and began a protracted battle over the value of the company. Pohlad and his associates pegged the value at $15.3 million, while the MTC attorneys argued that it was virtually worthless.

They pointed out that 480 of the company's 635 buses were 15 years of age or older. Indeed, 86 of the oldest buses had been banned from the streets of Minneapolis; 71 of them were being used in St. Paul and the remaining 15 were in storage.

The MTC attorneys also pointed to the unfunded pension liability. It was estimated at anywhere from $7.4 million to $15.2 million during the condemnation battle, though MEI's annual reports consistently put it at just under $10 million.

In August 1970, a court-appointed condemnation panel ruled that the company was worth $6.51 million, prompting appeals by both the company and the MTC. The ruling cleared the way for the MTC to take control of the bus operation, but the two sides continued to fight in the courts over its value. Five years later, the MTC finally agreed to pay MEI $7.9 million, plus $900,000 in interest from the date of the 1970 takeover, and to assume the bus company's pension liabilities.

The deal was a temporary godsend for Twin Cities bus riders. With generous support from the federal government, the MTC embarked on a five-year, $30-million bus program to replace the system's aging fleet with new, air-conditioned buses, install bus shelters and signs, and make other service improvements.

But it was an even better deal for Carl Pohlad and MEI shareholders. He used the revenue from the sale to help build MEI into the nation's third-largest Pepsi bottler. The bottling operations were sold in 1986 for $675 million, and Pohlad reportedly realized a personal profit of $160 million.

CONTENTS OF BACK POCKET

Fred Isaacs, Appellant, v. United States of America, Appellee.harry H. Isaacs, Appellant, v. United States of America, Appellee.fred A. Ossanna, Appellant, v. United States of America, Appellee.benson M. Larrick, Appellant, v. United States of America, Appellee.earl A. Jeffords, Appellant, v. United States of America, Appellee

United States Court of Appeals Eighth Circuit. - 301 F.2d 706

March 22, 1962, Rehearing Denied April 20, 1962

Melvin H. Siegel, Minneapolis, Minn., for Fred and Harry H. Isaacs. Leonard, Street & Deinard and Gary J. Meyer, Minneapolis, Minn., were with him on the brief.

S. P. Gislason, New Ulm, Minn., for Fred A. Ossanna and Ray G. Moonan, Minneapolis, Minn., was with him on the brief.

Robert J. King, Minneapolis, Minn., for Benson M. Larrick and Hvass, Weisman & King, Minneapolis, Minn., were with him on the brief.

Harry H. Peterson, Minneapolis, Minn., for Earl A. Jeffords, and Donald K. Smith, Minneapolis, Minn., was with him on the brief.

Hyam Segell, Sp. Asst. to the Atty. Gen., for appellees and Miles W. Lord, U.S. Atty., Minneapolis, Minn., was with him on the brief.

Before JOHNSEN, Chief Judge, and VAN OOSTERHOUT and MATTHES, Circuit judges.

MATTHES, Circuit Judge.

1

Appellants Fred A. Ossanna, Benson M. Larrick and Harry H. Isaacs were found guilty by a jury of mail and wire fraud violations, transporting property fraudulently obtained in interstate commerce and of a conspiracy to commit offenses against the United States; appellants Fred Isaacs and Earl A. Jeffords were found guilty of a conspiracy. The trial took place in the United States District Court, District of Minnesota, Fourth Division, with the Honorable Gunnar H. Nordbye presiding. Judgments of convictions were entered on the jury's verdicts. Separate appeals have been taken but all appeals will be disposed of in one opinion.

2

Preliminarily, a brief resume of the background and the factual situation forming the genesis of the prosecution will be of assistance to a clearer understanding of the issues presented on appeal.

3

The Twin City Rapid Transit Company was the parent company of the following subsidiaries:

Minneapolis Street Railway Company, the St. Paul City Railway Company, the Minneapolis and St. Paul Suburban Railroad Company, Twin City Motor Bus Company, the Minnetonka and White Bear Navigation Company, the Rapid Transit Real Estate Corporation, and the Transit Supply Company.[1]

4

The parent company was established in 1891, its stocks and securities have been listed on the New York Stock Exchange since 1895, and its approximately 450,000 shares of common stock are held by approximately 3,000 shareholders situated throughout the United States and Canada.

5

Prior to January 1, 1950, the Company operated an electric street railway system over approximately 430 miles of street railway lines in the Twin City area of Minneapolis and St. Paul, Minnesota, and the suburbs thereof. The Company generated and distributed the electricity necessary in the operation of the system. It owned power plants where electricity was generated, electrically operated streetcars, an overhead system of cables, trolley wires and poles, the track system of steel rails, streetcar barns, real estate and an underground transmission system, consisting of copper wires encased in lead cables laid in tunnels which generally followed street patterns throughout the Twin City area.

6

Before 1949 the Company's management was under the presidency of D. J. Strouse. One Charles Green, a substantial shareholder in the Company, was elected president of the Company In November, 1949. Fred A. Ossanna, one of the appellants herein, was then appointed general counsel of the Company.

7

Green's duration as president was short-lived. Apparently because of procedures he employed strife developed among members of the board of directors, with Ossanna becoming the head of one faction and Green leading the other faction. Ossanna organized a stockholders' committee and conducted a proxy campaign which brought about the ouster of Green. He was replaced by Emil B. Aslesan, who served from March, 1951, to September, 1951, when Ossanna became president.

8

The Ossanna administration embarked upon a program of rapid conversion from streetcars to busses. This program caused a vast amount of property previously utilized in the operation of the street railway system to become surplus, and these prosecutions are based upon the procedures employed in the disposition of the surplus property or in connection with such disposition.

9

A brief statement of the occupation of the parties and their relationship, if any, to the Company should be made before other aspects of the trial proceedings are considered.

10

Fred A. Ossanna has been a lawyer since 1921 and prior to becoming associated with the Company, practiced his profession in Minnesota; at the time he organized the stockholders' committee in 1951, Ossanna was the direct and beneficial owner of 200 shares of the preferred stock and 11,500 shares of the common stock of the Company. He was president of the Company during the period of the alleged violations.

11

James H. Towey became a member of the board of directors with the advent of the Ossanna administration, and was secretary and treasurer of the Company during the perior of the alleged violations. For a brief period of time he was in charge of the scrap program. He was a member of the Ossanna stockholders' committee organized for the proxy campaign and owned 170 shares of preferred and 5,700 shares of the common stock of the Company.

12

Benson M. Larrick with prior experience in the maintenance and operation of busses, was employed by the Company in 1952 and was placed in charge of the scrap resulting from the conversion. Larrick was made a director in 1954 and remained with the Company until 1957. During this period he was general manager, vice-president and assistant to the president.

13

Isadore Blumenfield, although not a member of the stockholders' committee referred to, was the real owner of a substantial number of shares of stock of the Company. He was a friend and close business associate of Ossanna.

14

Harry H. Isaacs was president of American Iron & Supply Company (American Iron), which acquired the greater portion of the overhead and underground scrap and salvage from the Company, and is also a partner in American Salvage & Supply Company. (Other partners were Fred Isaacs and Theodore Landy). Harry Isaacs was also a partner in Mid-Continent Development and Construction Company which also acquired certain real estate and scrap from the Company. (There were five other partners including Isadore Blumenfield and his attorney, Robert Levitt).

15

Earl A. Jeffords was a realtor doing business as J & C Holding Company. He was the owner of 500 shares of the common stock of the Company at the time the stockholders' committee was organized and functioned, and was a member of that committee.

16

Fred Isaacs, the son of Harry H. Isaacs, was secretary of American Iron and partner in the American Salvage & Supply Company; he actively participated in the acquisition of the overhead and underground surplus scrap acquired from the Company.

17

In this setting we proceed to consideration of the indictments upon which appellants were tried, and other formal proceedings in the trial court.

18

The indictments are lengthy, but may be summarized as follows: Indictment No. 4-59-CR. 77, returned September 18, 1959, was in 17 counts, and named as defendants the appellants Ossanna, Larrick, Harry Isaacs, and Jeffords, and also James H. Towey and Isadore Blumenfield.[2] Within this indictment, four separate statutory offenses were charged, to wit: use of mails to execute a scheme to defraud (18 U.S.C.A. 1341);[3] use of wire communication in furtherance of a scheme to defraud (18 U.S.C.A. 1343);[4] transportation in interstate commerce of goods knowingly converted or taken by fraud (18 U.S.C.A. 2314);[5] and conspiracy to commit an offense against the United States (18 U.S.C.A. 371).[6] As may be seen, each of these offenses depends directly (or in the case of 371, perhaps indirectly) upon the presence of a scheme to defraud. In Count I of this indictment, the scheme was described in detail-- there it was alleged that all of the named defendants (save Jeffords) were participants in 'a scheme and artifice to defraud (the Transit Company) and the stockholders * * * of real and personal property, and for obtaining for themselves and others not entitled thereto money and properties by means of false and fraudulent pretenses, representations, and promises.' For the purpose of later discussion, it is important to bear in mind that this 'overall scheme' is the keynote and common thread running throughout the separate counts, and it is this scheme-- 'to loot the Transit Companies'-- that serves to bind appellants together in guilt. After recital of the fraudulent scheme generally, as quoted above, Count I of the indictment then proceeded to recite some 17 transactions alleged to be 'a part of said scheme and artifice.' For the sake of brevity, these transactions have been characterized in trial and in the briefs under five headings: 1) fraud in dispositions of scrap and salvage; 2) fraud in sale of Mexican notes; 3) fraud in sale of the Hopkins Right-of-Way; 4) fraud as to commissions paid to defendant Jeffords; and 5) fraudulent transactions involving sale of lots to defendant Towey. It is important to note at this point that all of these transactions involved dispositions of Company assets.

19

This preliminary recital of the 'overall scheme' and parts thereof, was realleged in each of the subsequent mail fraud and fraud by wire counts. Counts I through XIII were based upon the 'mail fraud,' or 'wire fraud' statutes, each alleging mail or wire communications upon separate stated dates. Counts I through III covered the sending of incomplete and misleading annual reports on Company affairs (concealing transactions as to surplus salvage and scrap), and the defendants Ossanna, Larrick and Harry Isaacs were found guilty on these charges; Counts V and VI covered letters involving disposition of scrap and salvage, and defendants Ossanna, Larrick and Harry Isaacs were found guilty on these counts. Counts VII, VIII and IX were directed to communications concerning the Mexican notes, and defendants Ossanna and Larrick were found guilty, and defendant Harry Isaacs, not quilty on these three counts. Counts XIV, XV and XVI also directed to transactions with scrap lead and cable, charged violations of 18 U.S.C.A. 2314 (interstate transportation of fraudulently obtained property) through transportation on three separate dates of scrap and cable from Minnesota to points in Illinois and Nebraska, but it was not alleged these shipments were made as part of the overall scheme. The jury found defendants

Ossanna, Larrick and Harry Isaacs guilty on these three counts.

20

Count XVII was the conspiracy count, whereby it was charged that the defendants Ossanna, Towey, Larrick, Blumenfield, Harry Isaacs and Jeffords, conspired together, and with one George A. Francis, one James B. Aune, and one Walter N. Carlson (not named as defendants), and others unknown, to commit offenses against the United States (18 U.S.C.A. 371)-- to wit: violations of the wire fraud, mail fraud, and interstate transportation of property statutes, as condemned in the preceding counts. A total of 39 overt acts were alleged which, generally speaking, covered the various transactions alleged in the substantive counts. The jury found defendants Ossanna, Larrick, Harry Isaacs and Jeffords guilty as charged under this count.

21

The defendant Towey, named as a defendant under the foregoing 17 counts, was not tried with the other defendants due to illness. The trial court directed a judgment of acquittal as to defendant Blumenfield on Counts XIV, XV and XVI (transportation of scrap), and the jury found defendant Blumenfield not guilty on all of the remaining counts tried. The jury also found defendants Ossanna, Larick and Harry Isaacs not guilty as to Count XII, which involved commissions paid to a certain Paul Villaume.[7]

22

The appellant Fred Isaacs is before us by reason of his conviction under a second indictment, being No. 4-60-CR. 13. There, Fred Isaacs, and one Theodore Landy were named as defendants, charged with violation of the conspiracy section (18 U.S.C.A. 371). Generally speaking, this indictment was identical with Count XVII of Indictment No. 77, with some additional overt acts alleged, particularly with regard to alternation of weight tickets. The trial court directed a judgment of acquittal as to the defendant Landy, and the jury found defendant Fred Isaacs guilty as charged.[8]

23

After meticulous consideration by the trial court of every contention and claim of error asserted, appellants' after trial motions for judgments of acquittal, or in the alternative, for new trials, were denied. Ossanna was given a general sentence of four years, and a committed fine of $1,000 on his convictions under Counts I, II, III, V, VI, VII, VIII and IX, and an additional four years, to be served concurrently, and a committed fine of $10,000, covering his convictions on Counts XIV, XV, XVI and XVII. Harry Isaacs was given a general sentence of four years and a committed fine of $1,000 on his convictions under Counts I, II, III, V and VI, and an additional general sentence of four years, to be served concurrently, and a committed fine of $10,000 upon his convictions under Counts XIV, XV, XVI and XVII. Appellant Larrick was given a general sentence of two years and a committed fine of $1,000 under Counts I, II, III, V, VI, VII, VIII and IX, and a general sentence of two years, to be served concurrently, and a committed fine of $2,000 on the remaining counts. Jeffords received a sentence of 18 months and a committed fine of $1,500, and Fred Isaacs was sentenced for a period of one year and one day, and given a committed fine of $2,500. Additionally, appellants Ossanna and Harry Isaacs were each ordered to pay one-half of the costs of prosecution.

24

Common to all of the appellants is the broad contention properly preserved and protected by the record, that, as a matter of law, the evidence was insufficent to sustain the verdicts and the judgments entered thereon. It should be pointed out, however, that no question is raised or presented as to the sufficiency of the evidence to establish that the mails and wire were used for the purpose of executing the scheme to defraud. The sufficiency of evidence contention is focused upon two key issues: one, whether there was fraud practiced in the disposition of the Company's property to its loss and detriment; and two, was such fraud the result of a single, overall scheme and plan as contended by the Government, or were there a number of independent, isolated and unrelated schemes to defraud as urged by the appellants. The contention of the appellants requires a rather detailed review of the evidence; however, such review will be in the light most favorable to the Government because our chief concern is not whether there was evidence from which the jury could have acquitted the appellants but whether there was substantial evidence to sustain the jury's finding of fraud and the existence of an overall scheme to defraud as alleged in the indictments. Of course, as was pointed out by the trial court, if each appellant was privately engaged in his own bit of fraud and there was no common scheme, then appellants would prevail, for the convictions depended upon proof of joint action and a common purpose.

25

The scope, magnitude and extent of our task may be appreciated in light of the fact that the trial commenced on April 18, 1960, and proceeded without undue interruption to August 6, 1960, when verdicts were returned; that 150 witnesses testified; that the exhibits are many and voluminous and that 72 volumes of transcript of more than 11,000 pages have been filed as the record;[9] that the court's charge, following extensive argument by counsel for defendants[10] was so comprehensive and exhaustive that the entire day of August 1, 1960 (from 9:30 a.m. to 5:30 p.m.) was required and consumed in delivering the same, and that the jury deliberated without interruption until August 6, 1960, when the verdicts were returned.[11] Interestingly enough, the principal dispute between the Government and appellants stems not from a disagreement as to the pertinent facts and circumstances, but rather from the conclusions and interpretations to be drawn therefrom.

26

Preliminarily we recognize that the forms of fraud are as multifarious as human ingenuity can devise; that courts consider it difficult, if not impossible, to formulate an exact, definite and all-inclusive definition thereof; and that each case must be determined on its own facts. In general And in its generic sence, fraud comprises all acts, conduct, omissions and concealment involving breach of a legal or equitable duty and resulting in damage to another. 37 C.J.S. Fraud 1. For various definitions of fraud found in pronouncements by the courts, see 23 Am.Jur. Fraud and Deceit, 2.

27

SCRAP TRANSACTIONS

28

A large portion of the trial was consumed in developing the methods and procedures adopted in the disposition of scrap property, having a very substantial value. This property has been placed in several categories referred to as 'track and overhead scrap,' 'miscellaneous scrap' and 'underground cable.' Shortly after the Ossanna group assumed control of the Company, Towey was placed in charge of the sale of scrap. He was relieved of this responsibility and was replaced by Larrick, when the latter was employed by the Company, and thereafter the bulk of the scrap transactions was under the control and domination of Ossanna and Larrick as representatives of the Company, and Harry Isaacs and Fred Isaacs on behalf of American Iron, the recipient of the major portion of the scrap.

29

We have reviewed the entire record with painstaking care and have no difficulty in reaching the conclusion that there was substantial evidence from which the jury could find that the course pursued in disposing of the scrap was permeated with fraud. Indeed, counsel for the Isaacses, with commendable frankness, stated in oral argument before this Court: 'And may I say preliminarily, speaking for the appellants that I represent, Fred Isaacs and Harry Isaacs, we raise no question as to the sufficiency of the evidence to sustain a finding of fraud as to the separate transaction in which they engaged, the scrap transaction, had they been separately alleged and separately tried rather than alleged as a part of a single overall scheme or conspiracy.'[12]

30

There were numerous devices and devious methods employed to effectuate the fraudulent scrap transactions over the period beginning in mid 1951 and extending to August, 1955.[13] For the present, a summary thereof will suffice:

31

(a) At the direction of Ossanna and Larrick, adequate records and strict accounting procedures relating to the scrap accumulated and sold were discarded. The Company's auditors disapproved the procedures inaugurated by Ossanna and Larrick but with no avail, and ceased representing the Company because of the loose method of handling and disposing of the scrap.[14]

32

(b) After American Iron began acquiring overhead scrap from the Company, Ossanna and Larrick issued directions to subordinates to discontinue effective control of the scrap disposed of. Thus, in September, 1952, Larrick instructed Walter Larson, purchasing agent of the Company, 'From here on out, I don't want you to keep track of any scrap at all. Forget about it. Don't weigh it. Don't keep track of the trucks that come in to haul it away or attempt to price it. Just forget about it. We will take care of that up at the office, 11th Street.'

33

(c) The removal by American Iron of scrap was initated pursuant to a letter agreement consummated in August, 1951, under which American Iron agreed to 'take up all rail, scrap, overhead lines and poles of abandoned streetcar lines without cost to Company, their compensation being the salvage value of the material taken up. They also agree, in taking up the rail, to back-fill to the street level and to repave wherever necessary.' At the insistence of the auditors, a contract was entered into under date of February 11, 1952, providing that American Iron should remove tracks, overhead wires, poles, ties and other appurtenances along certain streets in Minneapolis; agreeing further to resurface and restore all portions of roadways and streets as required by city ordinances. As full compensation American Iron was to receive and retain all materials removed by it. It is undisputed, however, that steel rails were removed by American Iron from only one abandoned street and although it repaved this street, there was evidence from which the jury could find that the repaving costs were paid by the Company. The bulk of the rails removed by American Iron was from dirt streets where costly repaving was not required.

34

On August 13, 1952, an addendum was made to the original contract, including seven lines in St. Paul which were to be removed by American Iron. This addendum further provided that American Iron did not have the obligation to repave any of these streets.

35

(d) The authority of the Company to use the streets of Minneapolis for operation of its street railway system was derived from a franchise granted by the city. Thereunder the Company was obligated to pave, maintain, repair and improve that portion of the streets between the rails. During the progress of converting, the Company applied to the city for permission to discontinue the operation of streetcars on certain streets. Such discontinuance necessitated the removal of tracks, switches and other apparatus, and the repaving of many streets. After negotiations, and on October 30, 1953, the so-called conversion ordinance was adopted (in reality an agreement between the city and the Company) and which provided in part that the city would perfrom a substantial portion of the work incident to the removal of Company property from the streets, including the paving, repaving and resurfacing of streets over the rails and right-of-way where necessary. In consideration therefor, the Company obligated itself to pay to the city $10,000 per street mile, or a total of $922,790. Additionally, the Company was required to expend an amount not to exceed $300,000 for what is referred to as special work, and which involved in the main the removing of switches, mates, frogs, and other property from the streets. Under the contract of February 11, 1952, with American Iron, the latter was required to do and perform the work which was the subject of the conversion ordinance, and which required the expenditure on the part of the Company of more than $1,200,000. However, startling as it may seem, no effort was made by Ossanna or anyone on behalf of the Company to adjust the contract with American Iron or recover from it any part of the amount paid by the Company to the city. The conversion ordinance is just another circumstance which gives force to the Government's position, sustained by the jury, that the contract under which American Iron was purportedly operating was accorded lip service only and that even before the conversion ordinance, the Isaacses, with the approval of Ossanna and Larrick, were doing an effective job of defrauding the Company of property in substantial portions.

36

(e) Under date of July 30, 1952, Lynn G. Barnes, then vice-president and general manager of the Company, advised Ossanna that the value of the underground scrap, consisting in the main of copper wire encased in lead cables, was in excess of $1,000,000 and could be removed at a cost of approximately $50,000.[15] A suggestion from Barnes that the Company remove and sell the cable was ignored by Ossanna who, on January 2, 1953, entered into a second addendum to the February 11, 1952 contract with American Iron. This addendum was interpreted by American Iron as conferring upon it the absolute right to receive and retain all underground cable in consideration for its services in removing the same. It stands undisputed, however, that none of the cable was removed by American Iron. Instead, employees of the Company performed this operation and placed the cable in appropriate lengths on the streets, where it was picked up by American Iron. The scrap was weighed on scales of American Iron and false weight tickets were prepared by its employees at the instance and direction of Fred Isaacs or Landy.[16] Contrary to instructions from Larrick, employees of the Company who participated in the removal of the underground cable made and retained records disclosing the amount of cable actually removed and delivered to American Iron. This information was furnished to Government agents, who were able therefrom to calculate the total amount of cable in pounds that had been removed and to demonstrate the difference between the value of cable actually acquired by American Iron and the amount paid by the latter to the Company, based upon the false and fictitious weights. From exhibits prepared by the Government agents, it appears that whereas the estimated market value of cable received by American Iron was approximately $938,000, the Company received only $123,000.

37

In an effort to offset the overwhelming evidence of fraud found in the falsification of the weight tickets, appellants took the position in the trial court that American Iron did not purchase the underground cable; that under the contract (second addendum) it was entitled to the cable for its labor and expense incident to removal thereof, and that the amount paid to the Company represented an adjustment of labor costs. We agree with Judge Nordbye's conclusion, expressed in his opinion denying after-trial motions, that this 'contention * * * is simply incredible in view of the conduct of the parties.'

38

MEXICAN NOTES

39

This transaction, found by the jury to be a part of the scheme and artifice to defraud, culminated in the Company paying $238,349.73 to one George A. Francis.

40

James A. Quint, engaged in the business of exporting, importing and advertising, was authorized by Larrick to sell streetcars of the Company rendered surplus by the conversion program. Negotiations led to a sale of 91 P.C.C. streetcars to Servicio de Transportes Electricoes, the transit system in Mexico City, Mexico. The sales contract, dated September 4, 1953, provided for a cash payment of $327,541.68 or 20% of the sales price, and payment of the balance of $910,320 in 10 equal semi-annual installments, as evidenced by 10 promissory notes in the amount of $91,032 each, maturing as follows: the first on June 1, 1954 and one each 6 months thereafter, the last becoming due December 1, 1958. While the contract was dated September 4, 1953, the notes were dated December 1, 1953 and bore interest from that date at 4% per annum. There was a further contractual provision that purchaser had the right to take up the first two notes maturing June 1, 1954, and December 1, 1954, at a discount of 9% upon delivery of the cars to purchaser. The notes were guaranteed by Nacional Financiera S.A., a Mexican agency, stated by a banker witness to be a 'Mexican Government entity that covers the financing of the purchases by various Mexican Government agencies-- practically everything Mexico buys is guaranteed by the Nacional Financiera.' Another banker witness likened the agency to the 'equivalent of the Reconstruction Finance Corporation of the United States.'

41

Prior to the consummation of the sale of the streetcars, Ossanna had informed the executive committee of the Company that 'the outstanding feature of this deal is that the cars were sold on a contract basis, running for four years, payment being guaranteed by the Bank of Mexico and the Transportes Bank of Mexico.' And at the annual meeting of the shareholders of the Company on March 8, 1954, in reporting the sale of the streetcars, Ossanna stated: 'We sold them on time and after considerable negotiation, the Bank of Mexico, which is the same as our Federal Reserve Bank in this country, guaranteed payment, and we think we are perfectly safe and we were paid a portion of the amount (of) each car as shipped; the last one was shipped last Friday.'

42

Other evidence discloses that the solvency and soundness of Nacional Financiera had been brought home to Ossanna and Larrick. Thus, in August, 1954 Larrick had obtained information from the Hanover Bank in New York indicating that that institution had extended a line of credit to Nacional Financiera of ten to twelve million dollars; information had been furnished by the foreign department of Northwestern National Bank of Minneapolis attesting to the soundness of the notes; and in accordance with the contract for sale, the Company, on June 11, 1954, received $88,026.06 for each of the first two notes maturing on June 1 and September 1, 1954, representing the face amount thereof, less the 9% discount.

43

Other parties demonstrated considerable interest in disposing of the notes, although how they acquired knowledge of the Company's position in that regard is not made clear. In the fall of 1953, which was before the issuance of the notes, Harry Bloom, brother of defendant Blumenfield, is found on the scene discussing with one Salk, a Chicago mortgage banker, possible sale of the notes at a discount. Salk desired more information, and in April, 1954, was advised by Larrick that the notes were sound as an investment. Nothing of concrete form was done by Salk toward purchase of the notes, although Bloom endeavored as late as August, 1954, to persuade Salk to purchase these assets.

44

On October 6, 1954, Robert Levitt, who had been Blumenfield's attorney for many years, advised Ossanna that he was interested in securing an option to buy the notes at a discount of 40% for out-of-town principals whom he represented. (Two of these principals were Blumenfield and Bloom-- others were not named). The option was granted by Ossanna on October 11, 1954, and remained in force until November 1, 1954, when Levitt advised Ossanna that the option was being dropped as it involved too much risk. Levitt testified that he surrendered the option because Northwestern National Bank of Minneapolis had informed him that it was not familiar with Nacional Financiera, guarantor of the notes. However, the Government offered evidence establishing that as early as March, 1954, Levitt had been informed by Northwestern Bank that Nacional Financiera met its obligations 'with very satisfactory punctuality.'

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Blumenfield re-entered the pecture in February, 1955, when he took Ossanna to Miami, Florida, to meet with one Sam Kay. The latter offered to buy the notes at a 40% discount. Ossanna assisted in the preparation of the offer which was accompanied by Kay's check for $50,000. This offer was of short duration. On March 14, 1955, Ossanna returned Kay's check and informed him that a prior option held by another party had been exercised. Apparently this reference was to George A. Francis.

46

It appears that Francis made his entry into the picture in November, 1954, and shortly after Levitt had dropped his option. Having received two offers to purchase the notes at a discount of 40% (both coming directly or indirectly from Blumenfield or his associates), Ossanna informed the board of directors of the Company on November 16, 1954, that there were firms in New York and Chicago that would not take the notes at this discount, and stated: 'The danger to us, as in Brazil, is that Mexico can have a change of Government over night and their word wouldn't be worth a nickel.' During the same meeting the board adopted a motion offered by Ossanna that 'we put through our bank for collection and payment in American dollars the eight notes of Servicio de Transportes Electricoes for purchase by George Francis, of Mexico City, Mexico, at 40% discount, as offered by him * * *.' On the same day Ossanna wrote Francis that the board had accepted his offer to purchase the notes at a 40% discount. However, there was no evidence showing when or where Francis made such an offer. The Government did introduce a letter purportedly written by George A. Francis to 'Secretary to the Office of President of the Republic' under date of Octobre 7, 1954, in which he stated that 'the holders of * * * promissory notes want the Nacional Financiera, S.A. to discount them and in this case, the latter institution will receive the 4% interest designated in favor of the beneficiary. * * *.'[17]

47

On March 16, 1955, the board of directors of Minneapolis Street Railway Company adopted a resolution providing that 'this corporation sell to the Hanover Bank, without recourse, all the rights, title, * * * in and to the above described notes and joins with the St. Paul City Railway Company in selling and discounting said notes to the Hanover Bank for a total price equal to 92% of face value, plus 100% of unpaid and accrued interest.[18] On April 8, 1955, the four first maturing notes were sent to Northwestern National Bank with instructions to forward them to Hanover Bank for discounting at 92% of face value. These instructions were carried out. Hanover Bank paid $351,079.25 for these notes and credited this amount to Northwestern National Bank for the benefit of the Company. The Hanover Bank held that notes until their maturity dates, when they were paid in full.

48

On April 15, 1955, Ossanna sent check to Lewis & McDonald, attorneys of New York, for $5,000, representing their brokerage fee for handling sale of the four notes. On the same day two certfied checks were issued payable to George Francis, one in the sum of $15,000, the other for $96,438.24. These checks were authorized by either Ossanna or Larrick, or both, and a notation appeared thereon that they were in payment of commission on sale of the notes.

49

The remaining four notes were handled differently. On July 26, 1955, they were sent by Ossanna to Northwestern National Bank with instructions to forward them to Banco de Commercio in Mexico City for delivery to Nacional Financiera upon payment by the latter of the sum equal to 87% of the face value, plus 4% accrued interest thereon. Apparently there was a change in instructions to the Northwestern National Bank as we find it later directed Banco de Commercio to pay to George Francis out of the proceeds of collection, an amount not to exceed.$61,500. This was done, and on August 6, 1955, Northwestern National Bank received a draft in the amount of $323,585.59 representing the face amount of the notes, plus interest, less.$61,500 paid to Francis.[19]

50

On August 10, 1955, a Company check in the amount of $83,316.31 was drawn to the order of George Francis, with requisition attached thereto as follows: 'Deliver the following to, mail to George Francis, c/o Jose Leal, 605 S.W. 9 th Avenue, Miami, Florida,' and bore the approval of Ossanna and Larrick, and stated that it was in full of 'any and all commissions and/or discount.' On September 23, 1955, another check in the sum of $834.89 was drawn in favor of George A. Francis, covering 'balance commission sale of last four notes * * *.' Thus out of the proceeds of the sale of the eight notes, George Francis received $238,349.73.

51

Although a subpoena had been issued for George A. Francis, he did not appear and, of course, did not testify. The Government was able, however, to prove that on August 18, 1955, a bank account was opened in the name of George A. Francis in a bank in Miami, the deposit being $83,316.31, and that on August 24, 1955, $53,000 in cash was withdrawn from that account.

52

In the face of the foregoing facts and circumstances, appellants, and particularly Ossanna and Larrick, advance the argument that the only conclusion that can be drawn by reasonable men is that the course of conduct pursued in the disposition of the notes is invulnerable to a successful charge of fraud; that what was done was legal, proper and legitimate. We are not at all impressed with the urgency of this contention. While a casual and superficial consideration of the various attending circumstances may indicate some basis for the claim of legitimate fair dealing, when the searchlight of truth is focused on the transaction from beginning to end and the numerous ramifications thereof, we have no difficulty in finding a factual basis for the conclusion, obviously reached by the jury and shared in by the trial court, that a substantial amount of the Company's property was diverted from it and obtained by others not entitled thereto by fraudulent means. From our summary, it is made to appear that even before the notes were executed certain defendants and their close associates were maneuvering to dispose of them for a greatly reduced price. Later Ossanna granted two options, one to the attorney for Blumenfield, the other to Blumenfield's associate, for disposition of these assets at 60% of their face value. This was done notwithstanding Ossanna had vouched for the soundness of the notes on at least two prior occasions. While neither of the options was exercised, it is quite apparent that Ossanna utilized both offers very effectively by prevailing on the board of directors to authorize a sale of the notes to George A. Francis at a discount of 40%. The final chapter of this bizarre story is that although the board of directors authorized the sale of the notes to Francis, he did not in fact buy any of them. Neither is the evidence at all sufficient to satisfy reasonable men that Francis rendered any services beneficial to the Company in the disposition of the notes.

53

HOPKINS-RIGHT-OF-WAY

54

In 1951 the Company abandoned the streetcar line that ran from the city limits of Minneapolis (France Avenue) to Central Avenue in the City of Hopkins, Minnesota, leaving for disposal the right-of-way, the overall length of which was 3.6 miles. For a distance of 1.25 miles this strip of land was 66 feet wide and the remainder was 100 feet wide. Record title was held by Minneapolis and St. Paul Suburban Railroad Company, one of the subsidiaries of the parent company. It was the Government's position, and the indictment alleged, that 'It was a part of said scheme and artifice that properties of the Transit Companies, including part of that known as the Hopkins Right-of-Way * * * would be transferred by the Transit Companies for a grossly inadequate consideration and to and through one Walter N. Carlson and for his benefit and the benefit of the defendant's associates and of their nominees, including Fred Ossanna, Jr. and Mrs. M. A. Stirton, a daughter of defendant Fred A. Ossanna, and of Shady Oaks Realty Co., and of others to the grand jury unknown.'

55

The following facts with respect to this property were developed by the evidence. At the request of appellant Ossanna, one Brancheau, an experienced real estate dealer and appraiser in Minneapolis, submitted an appraisal on September 1, 1951, which divided the right-of-way into four sections, aggregating $84,500.[20] Additionally several members of the Minneapolis Real Estate Board made an appraisal of the portion of the right-of-way from Brookside Station to Central Avenue, and fixed the value at $40,550. (This same section had been appraised by Brancheau at $37,000). It was also made to appear that shortly after this property became surplus the Company determined the value of the entire strip for selling purposes to be approximately $98,000.[21]

56

The municipalities and political subdivisions (hereinafter referred to as municipalities), some six in number, through which the right-of-way ran, formed a committee for the purpose of purchasing the same for use as a thoroughfare into Minneapolis. This committee functioned through or in conjunction with the Board of Hennepin County Commissioners (Board). Under date of May 15, 1952, the Board by letter directed to the attention of Ossanna, offered to pay $56,500 for the entire right-of-way. A meeting between representatives of the interested municipalities and representatives of the Company, the latter including Ossanna, was held on May 19, 1952, during which 'Mr. Ossanna informed the committee that he could not recommend to the board of directors of this Company the sale of the right-of-way at such a low figure' ($56,500). Thereafter, on July 1, 1952, the Board made a written offer to purchase that part of the right-of-way from Brookside Station to a point in Hopkins for $75,000.[22] By letter of July 7, 1952, Ossanna accepted this offer, in which he also stated: 'Our previously stated offer to sell this right-of-way, as contained in our letter dated April 22, 1952, at a price of $98,500 was, in our considered opinion, a very low price * * *.' Thereafter, on October 15, 1952, a contract was entered into between the record title holder of a portion of the property involved and the City of Hopkins, which granted the city an option to purchase the same for $75,000.[23] This option was renewed from time to time until the summer of 1953. On July 9, 1953, in a letter directed to 'Chairman Right-of-Way Purchase Committee' Ossanna offered to sell the remainder of the right-of-way (France Avenue to Brookside Station) for 'cash consideration of $75,000.' This latter offer was not accepted, the Hopkins option was never exercised, and negotiations with the municipalities ceased in September, 1953.[24]

57

Apparently no further action was taken with regard to disposition of this property until Spetember 13, 1954, when the board of directors of the Company authorized Ossanna and Towey to effect the sale of the right-of-way 'on the best possible basis before taxes became due.' The next event of consequence occurred on May 6, 1955, when at a special meeting of the board of directors Ossanna reported that the 'Hopkins right-of-way had been agreed to be sold to W. N. Carlson for the sum of $10,000, we to pay the back taxes and give proper deed.' On the same date a deed conveying the property was executed by Towey and Ossanna.

58

The record discloses that shortly after Carlson acquired the property, appellant Jeffords entered upon the scene. He acquired an option to purchase a small portion of the right-of-way from Carlson for $6,000 and paid $3,000 with the execution of the option contract. On November 25, 1955, the option contract was modified whereby Jeffords released a portion of the property under option in consideration of the payment to him of $8,000. (This was accomplished by the forgiveness of $3,000 under the original option and a payment of $5,000 over and above that). The net result of the modification was that Jeffords acquired a lot and $2,000 in cash from Carlson. Jeffords later sold the property for $12,000, thus realizing a profit on the whole transaction of $14,000.

59

Shortly after Carlson acquired the property he entered into an agreement with Fred Ossanna, Jr., and Margaret Stirton, son and daughter of appellant Ossanna, under which they were to share 'fifty-fifty' in the profits dervied from the sale of the real estate. Thereafter and through the efforts of a real estate company, and during the years 1955, 1956 and 1957, Carlson sold the remainder of the Hopkins right-of-way for a total of $126,075.56.[25] Carlson paid to Fred A. Ossanna, Jr., and Margaret Stirton, the following amounts:

60

Date	Name	Amount

April 25, 1956	Fred A. Ossanna, Jr.	$15,000.00
April 25, 1956	M. A. Stirton	15,000.00
December 19, 1956	M. A. Stirton	5,000.00
December 19, 1956	Fred A. Ossanna, Jr.	5,000.00
July 16, 1957	M. A. Stirton	6,000.00
July 16, 1957	Fred A. Ossanna, Jr.	6,000.00
	Total	$52,000.00

61

The $15,000 check to Fred A. Ossanna, Jr. was endorsed payable to an Ossanna owned Company, and the $15,000 check to Margaret Stirton was endorsed payable to appellant Ossanna.[26]

62

It should also be stated that appellant Ossanna was active in negotiations carried on for sale of the property after it was acquired by Carlson. The latter informed the realtor who was handling the sales that Ossanna was Carlson's counsel, and the realtor was directed to consult with Ossanna when Carlson was not available. Copies of correspondence from the realtor to Carlson were sent to Ossanna.

63

From the foregoing chain of circumstances established by undisputed evidence, we have no difficulty in concluding that there was substantial evidence to support a finding that the transaction was motivated by fraud and not as a result of an honest desire to protect the interests of the Company. As was true with regard to disposition of the Mexican notes, there were negotiations which facially indicated legitimacy but when the ultimate result is considered, the shell of fair dealing is pierced, and the true intent and purpose of the main participants is revealed. There simply is no logical explanation for disposition of property appraised at $84,500, valued by Ossanna at $98,500 and $150,000, being sold for $10,000, so that the purchaser was enabled to reap a profit of nearly one thousand per cent, and one of the appellants, who unquestionably dominated and controlled the entire situation insofar as the Company was concerned, being the recipient directly or indirectly of $52,000.

64

JEFFORDS' COMMISSIONS

65

This facet of the scheme involves the sum of $107,500 paid to appellant Earl A. Jeffords, who was a licensed real estate broker, doing business as J & C Holding Company. As we shall presently see, four checks totaling that sum were issued in payment of commissions purportedly due Jeffords in connection with the sale of three different parcels of real estate which had become surplus property. The controverted issue resolved in favor of the Government is whether Jeffords was legally entitled to the commissions as urged by him, or whether, as contended by the Government, the payments were wholly without consideration and constituted a part of the scheme and artifice to defraud the Company.

66

On July 6, 1954, a requisition signed by Larrick and Ossanna, initialed by Towey, directed the issuance of the Company's check to Jeffords in the sum of $12,500 'covering commission on power plant in excess of $1,250,000.' Jeffords asserted that he was the procuring cause for sale of the power plant to Northern States Power Co. and consequently was entitled to the commission. The Government's position was exactly to the contrary. Our review and analysis of the record convinces that there was substantial evidence to support the Government's position. Indeed, the official minutes of the Company plainly established that Ossanna was given credit for disposing of the property through his sole efforts.[27]

67

The Company's Currie Avenue property was sold to the City of Minneapolis in November, 1954, for $200,000. On the day before the sale was authorized by formal action of the board of directors, Jeffords made a demand for $20,000 commission in accordance with an exclusive sales contract. However, the contract so relied on was not produced by Jeffords then or at any time during the trial. He did not claim to be the procuring cause for sale of the property. In the evidence, which is substantial in nature, we find facts and circumstnaces clearly supporting the conclusion that Jeffords' claim of an exclusive contract was entirely fictional and not based on fact.

68

The Company owned an improved tract of approximately 27 acres at University and Snelling Avenues, St. Paul, Minnesota, that was sold in January, 1955, for $1,500,000, less depreciation and adjustments, the amount actually received by the Company being $1,334,504. One Paul Villaume, a distant relative of Ossanna, was a real estate dealer and procured the purchaser for this property. He was paid a commission of $37,500, being 2 1/2% of the gross sales price.[28]

69

At meetings of the board of directors of the company (September 14 and 17, and December 30, 1954), the only commission discussed in connection with the sale was that due Villaume. Indeed, at the September 17 meeting, Ossanna assured the board there would be no additional commissions paid in connection with the sale. As late as January 14, 1955, in seeking release of the lien of the mortgage on the property, Ossanna and Towey certified to the Northwestern National Bank that the broker's commission was $37,500. On that day Villaume submitted his bill, and on January 17, 1955, pursuant to requisition signed by Ossanna, check was sent to Villaume for $37,500. Notwithstanding the prior assurances with respect to the amount of commission that would be paid, we find that on authorization of Ossanna, Larrick and Towey, Jeffords was paid $75,000 under the guise of a commission. This payment was in two checks, the first dated January 25, 1955, in the amount of $35,000, and the second under date of February 16, 1955, in the amount of $40,000. To afford justification for the payment of the $75,000, reliance was based on a contract which on its face gave Jeffords' company (J & C Holding Company) the exclusive right to sell the property 'for one year from this date-- April 15, 1954, to April 15, 1955' and under which the Company was obligated to pay to him a commission of 5% of the total sale price. This document was signed by Ossanna and Towey as president and secretary of the Company. To further justify the payment, and as authority for the purported contract, appellants rely upon action of the executive committee of the Company, as disclosed by minutes of the meeting of that committee supposedly held on April 12, 1954.[29] The evidence conclusively and convincingly established that the minutes were not prepared on the date of the indicated meeting but were in fact prepared and inserted in the minute book in the early part of 1955. The inference is quite clear that they were prepared at about the time the sale was made and the payment sent to Jeffords. Appellants contend that even though the minutes were prepared at a later date, the meeting was nonetheless held on April 12, 1954, and the minutes truly reflect the action taken. At best, this was a question of fact to be resolved by the jury, which had before it evidence of unusual circumstances, which, in our judgment, may properly be characterized as badges of fraud. The entire transaction gives basis for the conclusion that the preparation of the minutes, as well as the purported contract-- were in fact fraudulent transactions-- designed to give the appearance of legality.

70

While there was no direct evidence of kick-backs from Jeffords, his disposition of the $107,500 was revealed and proved interesting, if not significant. The commission of $12,500 (power plant) was deposited on July 17, 1954, and at the same time Jeffords withdrew $11,500 in cash. The $20,000 received in connection with the Currie Avenue property was deposited on November 18, 1954, and on the same date Jeffords withdrew $15,000 in cash. When the $35,000 was deposited, Jeffords withdrew $25,000 in cash and when he deposited the $40,000 he withdrew $30,000 in cash. He claimed in a statement to an agent of the Internal Revenue Service that after the latter two withdrawals he departed for Florida with the greater portion of $55,000 in the back of his automobile, with the intention of purchasing real estate but that he lost the entire amount betting on horses at races he attended in Florida.

71

TOWEY LOTS

72

As previously stated, James A. Towey was not tried because of illness. He was an active participant in this transaction which concededly resulted in a loss to the Company.

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Since none of the appellants questions the sufficiency of the evidence to establish fraud in the disposition of this property, our review of the facts is limited to those which stand out in bold relief.[30]

74

In the early part of 1954 and in the presence of two employees of the Company and Towey, Larrick offered to sell certain lots along the Harriet Right-of-Way for $500. Towey accepted the offer, paid $500 to the Company and at his direction a deed dated March 1, 1954, was executed whereby the record title was conveyed to Bernard Heintz, an uncle of Towey. Heintz testified he knew nothing about the transaction. Approximately six months later Towey sold the lots for $5,500 and caused his uncle to execute a deed to the purchasers. The sale became the subject of a hearing before the Railroad and Warehouse Commission of the State of Minnesota in 1958.

There is evidence that shortly therefter Towey paid additional money to the Company. The suggestion in the briefs of appellants that the payment was in connection with the lots does not find support in the record. In any event, the evidence supports a finding that this transaction was the result of rank fraud, participated in not only by Larrick, who set the stage, but also by Ossanna, who, at a meeting of the board of directors of the Company, made the motion whereby the board was persuaded to approve the sale to Towey.

75

The foregoing summary of the evidence and our conclusions should suffice to dispose of the first issue-- the sufficiency of the evidence to support the finding of fraudulent conduct in the disposition of the company's property which was the subject of the transactions we have reviewed.

76

This brings us to the key issue-- was the fraudulent conduct the result of a single, overall scheme to defraud? Here, it is strenuously insisted that is no evidence affording proof that appellants, particularly Larrick, Harry Isaacs, Fred Isaacs and Jeffords, knowingly joined, adhered to, and participated in a single scheme to defraud. Hence it is claimed that in light of Kotteakos v. United States, 328 U.S. 750, 66 S.Ct. 1239, 90 L.Ed. 1557, substantial prejudice resulted from a trial en masse of all appellants with acts of one being admitted against others.

77

The instant question is not new to the courts. Out of numerous cases general principles have evolved which have application here.

78

A fraudulent scheme and conspiracy may be and usually is established by circumstantial evidence; by inferences from the evidence of relationship of the parties and by overt acts, conduct and other probative circumstances. Marbs v. United States, 8 Cir., 250 F.2d 514, 522, 523, cert. den. sub nom. Sarkis v. United States, 356 U.S. 919, 78 S.Ct. 703, 2 L.Ed.2d 715; Marx v. United States, 8 Cir., 86 F.2d 245, 250; Phelps v. United States, 8 Cir.,160 F.2d 858, 867, cert. den. sub nom. Peters v. United States,334 U.S. 860, 68 S.Ct. 1525, 92 L.Ed. 1780; Madsen v. United States, 10 Cir., 165 F.2d 507, 511. 'Conspirators ordinarily do not announce that they have joined their efforts for the purpose of engaging in or furthering some unlawful scheme or plan-- rather they are inclined to cover their machinations, thereby casting upon the prosecution the burden, sometimes difficult, of establishing the conspiracy, and the overt acts in consequence thereof, by circumstantial evidence,-- by actions of the conspirators.' Blumenfield v. United States, 8 Cir., 284 F.2d 46, 53, 54, cert. den. 365 U.S. 812, 81 S.Ct. 693, 5 L.Ed.2d 692.

79

' Participation in a criminal conspiracy need not be porved by direct evidece; a common purpose and plan may be inferred from a 'development and a collocation of circumstances'.' Glasser v. United States, 315 U.S. 60, at p. 80, 62 S.Ct. 457, 469, 86 L.Ed. 680; where the evidence affords satisfactory proof that a conspiracy has been formed, 'but slight evidence connecting a defendant therewith may still be substantial, and if so, sufficient.' Galatas v. United States, 8 Cir., 80 F.2d 15, 24, cert. den.297 U.S. 711, 56 S.Ct. 574, 80 L.Ed. 998; McDonald v. United States, 8 Cir.,89 F.2d 128, 138, 139, cert. den. 301 U.S. 697, 57 S.Ct. 925, 81 L.Ed. 1352; Marx v. United States, supra, 86 F.2d 245, at p. 250. As pertinently stated by this Court in Phelps v. United States, supra, 160 F.2d 858, at p. 867: 'Once there is satisfactory proof that a conspiracy has been formed, the question of a particular defendant's connection with it may be merely a matter of whether the stick fits so natural into position in the fagot as to convince that it is part of it.' Cf. United States v. Cohen, 3 Cir., 197 F.2d 26, 29; Nye & Nissen v. United States, 9 Cir., 168 F.2d 846, 852, aff'd 336 U.S. 613, 69 S.Ct. 766, 93 L.Ed. 919; Meyers v. United States, 6 Cir., 94 F.2d 433, cert. den. 304 U.S. 583, 58 S.Ct. 1059, 82 L.Ed. 1545.

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It is not necessary to support a finding of the existence of an overall scheme or conspiracy that each participant knew others involved therein or the precise part each was playing. Lefco v. United States, 3 Cir., 74 F.2d 66, 68, 69.

81

'* * * It is most often true, especially in broad schemes calling for the aid of many persons, that after discovery of enough to show clearly the essence of the scheme and the identity of a number participating, the identity and the fact of participation of others remain undisconvered and undiscoverable. Secrecy and concealment are essential features of successful conspiracy. The more completely they are achieved, the more successful the crime. Hence the law rightly gives room for allowing the conviction of those discovered upon showing sufficiently the essential nature of the plan and their connections with it, without requiring evidence of knowledge of all its details or of the participation of others. Otherwise the difficulties, not only of discovery, but of certainty in proof and of corrolating proof with pleading would become insuperable, and conspirators would go free by their very ingenuity.' Blumenthal v. United States, 332 U.S. 539, at pp. 556, 557, 68 S.Ct. 248, 256, 92 L.Ed. 154.

82

The substantive offenses proscribed by Title 18 U.S.C.A. 1341 and 1343 (mail fraud and fraud by wire) are closely related to a conspiracy, proscribed by Title 18 U.S.C.A. 371. The distinguishing feature is that the former may be conceived by one person, and the mails or wire must be used for purpose of executing the scheme, while a conspiracy requires an agreement of two or more to violate the law, and at least one overt act in furtherance of the conspiracy. In Blue v. United States, 6 Cir., 138 F.2d 351, 358, cert. den. 322 U.S. 736, 64 S.Ct. 1046, 88 L.Ed. 1570, the Court stated: 'When a scheme to defraud is shared in by two or more, it becomes a conspiracy; the rules of evidence are the same as where a conspiracy is charged (Robinson v. United States, 9 Cir., 33 F.2d 238); and the act of each party in furthering the common scheme is the act of all.'

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Each participant in a scheme to defraud is responsible for the use of the mails and wire used to execute and carry out the scheme.

84

'Where two or more persons jointly devise and execute a scheme to defraud by the use of the mails, they may thereby become in effect partners in the criminal purpose of so using the mails to defraud. If they do, the acts of each thereafter, during the existence and execution of the scheme, done in furtherance of that execution, may become the acts of all the partners, and each may be convicted of the mailing of a letter which one of his partners caused to be mailed in the execution of the scheme." Baker v. United States, 8 Cir., 115 F.2d 533, 540, cert. den. 312 U.S. 692, 61 S.Ct. 711, 85 L.Ed. 1128.

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See also Steiner v. United States 5 Cir., 134 F.2d 931, 934, cert. den. 319 U.S. 774, 63 S.Ct. 1439, 87 L.Ed. 1721.

86

By applying the foregoing principles we conclude that there was substantial evidence from which the jury could find: (1) the existence of an overall scheme to defraud; (2) that the transactions under scrutiny were a part of that scheme; (3) that the appellants with knowledge of its existence, adhered to and participated in the scheme devised by one or more of them; (4) that as participants in the scheme, and for the purpose of furthering and executing the same, Ossanna, Larrick and Harry Isaacs used the mails or wire, or both; (5) that by express or implied agreement, a conspiracy was formed to commit the substantive offenses of mail fraud and fraud by wire, and the appellants were parties to or joined such conspiracy.[31]

87

In reaching this conclusion we have applied the principle universally recognized, that if the evidence viewed in light most favorable to the Government is such that reasonable minds 'might differ' then the question becomes one of fact for the jury to resolve, and not one of law to be determined by the courts. See and compare Brennan v. United States, 8 Cir., 240 F.2d 253, 259, cert. den. 353 U.S. 931, 77 S.Ct. 718, 1 L.Ed.2d 723; Connelly v. United States, 8 Cir., 249 F.2d 576, 585, cert. den. 356 U.S. 921, 78 S.Ct. 700, 2 L.Ed.2d 716; Northcraft v. United States, 8 Cir., 271 F.2d 184, 187.

88

The existence of an overall scheme finds support in the scope and magnitude of the fraudulent conduct. It extended to a substantial portion of the Company's property made available for disposition as the result of the conversion program. That property of varying characteristics was the subject of more than one transaction and different parties participated therein, does not necessarily negate the existence of one common and broad objective, or conclusively establish that each transaction was the product of an independent agreement or scheme to defraud.

89

The scheme made its appearance in the methods adopted and pursued in the handling and disposition of the first item of surplus property-- overhead scrap and rails. From this beginning in 1951 fraudulent conduct dominated the disposition of scrap until the last lot was disposed of in late 1955. The fraud intensified as scrap disposition progressed until, as aptly stated by the trial court: '* * * Ossanna and Larrick having laid the ground work so as to allocate to themselves complete control of the disposition of the underground cable, boldly permitted American, through Harry and Fred Isaacs, to write its own ticket, figuratively and literally, as to the price American was to pay for this scrap, with the resulting substantial monetary loss to the Transit Company.' In the interim, the fraud made its appearance in other transactions to which we have alluded. Thus through the combined efforts of appellants, the Company was mulcted out of property of staggering proportions.[32]

90

The jury was entitled to consider the relationship of appellants to each other and to co-conspirators not named as defendants as an additional factor bearing heavily on the hypothesis of one scheme and conspiracy. The evidence indicated that Ossanna was the dominating character. He apparently mastermined the scheme and its fruition and played the leading role. Closely allied to Ossanna and collaborating with him in the machinations were appellant Larrick and defendant Towey. While their actvities were not as prominent, it is apparent that without their assistance it would have been difficult to perpetrate and effectuate the fraudulent scheme. Appellant Harry Isaacs was not a direct actor in all the various transactions but he too performed an important role in the overall scheme. If not an originator of the scheme, he soon became a party thereto. His part in the fraud is made manifest from the scrap disposition (the scheme had its genesis in the handling of the scrap and it had its demise in the scrap). Harry Isaacs was the recipient of other Company property. In December, 1953, the Mid-Continent Development and Construction Company (a partnership consisting of Harry Isaacs, owner of 47 1/2%, Robert Levitt, Isadore Blumenfield and four other business associates) purchased seven parcels of real estate from the Company and various items of scrap for $300,000. The partnership sold the property in 1954 and 1955 for a sum in excess of $465,000. The sale to Mid-Continent was consummated after Ossanna had received other offers and had executed option contracts on certain of the parcels. The court ruled that the amount paid by the partnership for the property ($300,000) was not so grossly inadequate as to furnish evidence of fraud, and dismissed these counts of the indictment. However, the court instructed the jury it could consider the evidence relating to this transaction to show relationship of the parties.[33]

91

There was other evidence showing the close relationship between Harry Isaacs and Larrick, two of the principal actors in the scrap transaction. In 1955 and near the termination of the scheme, Larrick loaned Isaacs $10,000. The trial court viewed this transaction with some suspicion, stating in his after-trial memorandum: 'Many inferences may be suggested from that episode. In any event, it is significant that Larrick, an officer of the Transit Company, loaned a substantial sum of money to one who at the time was looting his employer of thousands of dollars.'

92

The role of appellants Fred Isaacs and Jeffords, charged with and convicted of participation in the overall scheme, under the conspiracy count, while less prominent, was nevertheless important and essential in carrying out the scheme. Fred Isaacs was secretary of American Iron and as such was a party to the original scrap removal. He was active in the whole scrap program. The fraud he practiced was of the rankest kind, as manifested in the changing of weight tickets to the benefits of American Iron and to the loss of the Company. The fraudulent disposition of the scrap became and was one of the major objectives of the scheme, it was part and parcel thereof, and being so, sound authority and common logic dictate that Fred Isaacs became a knowing participant in the scheme and aided in its perpetration.

93

Jeffords was a close associate of Ossanna and manifested more than a passing interest in the affairs of the Company. As a shareholder he became a member of Ossanna's stockholders' committee, which was successful in its endeavor to place Ossanna in control. As we have noted, he profited to the extent of $14,000 in the transactions involving the Hopikins Right-of-Way. His manipulations assisted in effecting the overall scheme wehereby the Company paid to him a large sum of money without any consideration or benefit inuring to it.

94

The maze of circumstances furnishes adequate factual support for a finding that a common broad scheme and plan was conceived at or about the time the conversion program was initiated. As the scheme took form through concrete action, others joined as their efforts were required, so that a closely knit and relatively small group of men was drawn together, their efforts were united, and by devious, ingenious and unlawful means the common objective-- looting the Company of substantial property-- was effectuated. There were 'insiders,' Ossanna, Larrick and Towey; there were 'outsiders' among them, Harry Isaacs, Fred Isaacs and Jeffords. From the ultimate result it becomes apparent that each fitted 'so naturally into position in the fagot as to convince that (he was) part of it.' Phelps v. United States, supra, 160 F.2d at p. 867.

95

Our holding does not run counter to the cases relied upon by appellants. They have been considered and in our view are distinguishable on the facts. No useful purpose will be served by an extended discussion of the factual elements present in the cases relied upon which required reversals of the judgments of conviction. We limit our examination to two opinions by the Supreme Court of the United States because of the urgent claim that they control.

96

In Ingram v. United States, 360 U.S. 672, 79 S.Ct. 1314, 3 L.Ed.2d 1503, the four petitioners and six others were convicted of a conspiracy to evade and defeat payment of federal taxes imposed on lottery operations. The Court held that the evidence was insufficient to support a finding that two employees of Ingram and Jenkins knew that the latter had not paid the taxes. In the course of the opinion the Court stated, at pp. 677-678, 79 S.Ct. at p. 1319:

97

'It is fundamental that a conviction for conspiracy under 18 U.S.C. 371 cannot be sustained unless there is 'proof of an agreement to commit an offense against the United States.' Pereira v. United States, 347 U.S. 1, 12 (74 S.Ct. 358, 364, 98 L.Ed. 435). There need not, of course, be proof that the conspirators were aware of the criminality of their objective, but an essential ingredient of the proof was knowledge on the part of Smith and Law that Ingram and Jenkins were liable for federal taxes by reason of the gambling operation. 'Without the knowledge, the intent cannot exist.' Direct Sales Co. v. United States, 319 U.S. 703, 711 (63 S.Ct. 1265, 1269, 87 L.Ed. 1674).

98

"Conspiracy to commit a particular substantive offense cannot exist without at least the degree of criminal intent necessary for the substantive offense itself.' The substantive offense which Smith and Law were accused of conspiring to commit was the willful evasion of federal taxes, an offense which, even presuming knowledge of the tax law, obviously cannot be committed in the absence of knowledge of willfulness. Spies v. United States, supra (317 U.S. 492, 63 S.Ct. 364, 87 L.Ed. 418). Cf. United States v. Falcone, 311 U.S. 205, (61 S.Ct. 204, 85 L.Ed. 128).'

99

From the foregoing, the appellants have erroneously concluded that the accused must possess full knowledge of every detail of an unlawful scheme before he may be properly held to be a part of it. We do not regard the case as so holding. As pointed out in Blumenthal v. United States, 332 U.S. 539, at p. 557, 68 S.Ct. 248, at p. 256, conspirators may be found guilty 'without requiring evidence of knowledge of all * * * details (of the conspiracy) or of the participation of others.'

100

In Kotteakos v. United States, 328 U.S. 750, 66 S.Ct. 1239, 90 L.Ed. 1557, the only question was whether petitioners had suffered substantial prejudice from being convicted of a single general conspiracy by evidence which the Government conceded and the court of appeals had found (United States v. Lekacos, 2 Cir., 151 F.2d 170) proved not one conspiracy but eight or more different ones of the same sort executed through a common key figure. The Supreme Court, in distinguishing Berger v. United States, 295 U.S. 78, 55 S.Ct. 629, 79 L.Ed. 1314, held that a defendant has 'the right not to be tried en masse for the conglomeration of distinct and separate offenses committed by others * * *.' Having demonstrated the existence of substantial evidence to support the finding of a single overall scheme to defraud, the teachings of Kotteakos are clearly inapplicable. It is, of course, well settled that all parties joining a conspiracy, whether at the time it is formed or later, and who cooperate in the common effort to obtain unlawful results, assume responsibility for all that is done before or after becoming a party thereto. Marbs v. United States, supra, 250 F.2d 514, 522, cert. den. sub nom. Sarkis v. United States, 356 U.S. 919, 78 S.Ct. 703, 2 L.Ed.2d 715; United States v. Compagna, 2 Cir., 146 F.2d 524, 530, cert. den. 324 U.S. 867, 65 S.Ct. 912, 89 L.Ed. 1432; Lefco v. United States, 3 Cir., 74 F.2d 66, 68.

101

We now direct our attention to the contention that in any event appellants are entitled to another trial. The claim is made that their rights were substantially prejudiced by the court's action in giving and refusing certain instructions, by its ruling on evidentiary matters and by the rebuttal argument of Government counsel.

102

Both indictments alleged that as a part of the scheme to defraud, Harry Isaacs and American Iron, having become obligated to the Company to fulfill substantial portions of its obligations to the City of Minneapolis, would be relieved of that obligation without consideration and at the expense of the Company. This portion of the indictments as well as considerable evidence bearing on the scrap transactions brought into focus the conversion ordinance adopted by the city in October, 1953, and to which prior reference has been made. More precisely, it became an issue as to whether the ordinance was in fact a device or instrument to further the scheme and plan to defraud the Company. On this issue the defendants requested the court to give the following instruction:

103

'There is no evidence that the passage of the Minneapolis Conversion Ordinance in October, 1953 was procured with the design of relieving American of its obligations to repave any of the streets in Minneapolis, or as a part of any scheme to defraud the Transit Company.'

104

The court refused to give the requested instruction and proper exceptions were taken to such refusal, so that the court's action in that regard is preserved. The issue was submitted to the jury by the following portion of the court's charge:

105

'It is the Government's contention that, to all intent and purposes, the contract of February 11, 1952, and the addenda thereto, were abandoned, and in pursuance of the scheme to defraud, American was relieved of its obligation to do any paving by the arrangement allegedly made by the defendant Ossanna in fostering the City Ordinance of October 30, 1953, which, according to the Government, in effect relieved American of its obligation to remove the tracks and to repave where necessary; that in order to be relieved of the obligations of rail removal and repaving which American had assumed under the February 11, 1952, contract and its addenda, together with being relieved of snow removal and sanding of streets, and so forth, and other provisions of the franchise, the ordinance provided that Transit was required to pay to the City of Minneapolis some $900,000, * * *.

106

'What about the ordinance passed by the City of Minneapolis to relieve the streetcar company of its duty to remove tracks and repave and the other obligations which the streetcar company had under its franchise? Was that a device arranged by Ossanna and Isaacs to free American from the alleged onerous burden of going forward with the contract, * * *? * * * If you find that the agreement in that regard between the Transit Company and Minneapolis City Council was negotiated and made without fraud and not as a part of an alleged overall scheme to defraud, and if American Iron was in good faith ready, willing and able to perform the obligations expressed in its contract of February 11, 1952, and the two addenda, then the fact that, after that contract and addenda were executed, the conversion ordinance was enacted, the Transit Company was not discharged of its obligation to American under the contract of February 11, 1952, and the addenda, nor was American deprived of any of its rights under the contract and the addenda.'

107

Although none of the defendants objected to the instruction, as required by Rule 30, Federal

Rules of Criminal Procedure, four of the appellants, Ossanna, Larrick and the Isaacses, now assert error in the foregoing submission. While technically we would be justified in refusing to review the correctness of the given instruction, we have decided against that course. By offering the instruction and taking exception to its refusal, timely and specifically, the position of appellants was made known to the court. See and compare United States v. General Motors Corp., 3 Cir., 226 F.2d 745, 750; Hasselbrink v. Speelman, 6 Cir., 246 F.2d 34, 39; Moore, Federal Practice, Vol. 5, 51.04, p. 250. Moreover, consideration and determination of the question properly preserved (refusal of instruction) will entail exploration of whether the issue should have been submitted, and the correctness of the submission.

108

Specifically, the complaining appellants now contend that there was no evidence of fraud in the procurement of the conversion ordinance; that all negotiations and bargaining between the city officials on the one hand and the Company representatives on the other which were consummated in the adoption of the ordinance were at arm's length and in good faith; that there was evidence from which the jury could find that the contract of February 11, 1952, and the addenda thereto was a valid and binding agreement and that the terms thereof were being performed and complied with in every respect. Upon this factual premise appellants invoke the rule that where erroneous instructions are given on a basic issue, a conviction cannot be sustained on some other theory, even though 'the appellate court is left without doubt' that the defendant is 'guilty.' Bollenbach v. United States, 326 U.S. 607, 614, 615, 66 S.Ct. 402, 406, 90 L.Ed. 350; Weiler v. United States, 323 U.S. 606, 611, 65 S.Ct. 548, 89 L.Ed. 495; Yates v. United States, 354 U.S. 298, 77 S.Ct. 1064, 1 L.Ed.2d 1356.[34]

109

The instructions under consideration must be viewed in light of the evidence that was before the jury and the trial theory of the respective parties.

110

At the outset, it may be said unequivocally that there was no evidence of fraudulent conduct on the part of the city officials or representatives of the Company with respect to the adoption of the conversion ordinance and when so viewed it is crystal clear that there was no fraud in the procurement of the conversion ordinance. A mere reading of the proceedings of the meetings antedating the conversion ordinance convinces that the involved parties were negotiating and bargaining in good faith and at arm's length. But fraud in the actual procurement or adoption of the ordinance was never an issue-- no one contended that it was-- and indeed the Government expressly disavowed any fraudulent conduct between the Company and the city. The Government's theory was, and this became a major issue, that Ossanna entered into an arrangement with the Isaacses whereby they would ostensibly discharge the obligations of the Company to the city under the franchise agreement then in effect, well knowing such arrangement would never be carried out; that Isaacs' company, American Iron, would never be called upon or required to discharge its obligations under the contract, and that the Company would later of necessity be forced to further obligate itself to the city to secure removal of its property from the streets, to repave and otherwise improve the streets formerly occupied by Company property in order that the conversion program could actually be put into operation. It was in this factual setting that the Government contended that the adoption of the conversion ordinance was in fact a part of the scheme and device to defraud.

111

In summary, the jury was entitled to give consideration to the question of whether the conversion ordinance was another facet of the scheme to defraud. The refused instruction would have completely removed this issue and any consideration thereof from the jury, hence the court's action in refusing to give it was not error.

112

We recognize that the language used in the given instruction could have been more explicit, and that standing alone and without regard to the evidence and the theory adopted by the parties, it might be susceptible to the interpretation which appellants now place thereon. However, when considered in light of the issue that was litigated and what actually transpired, we are satisfied that it did not serve to misdirect the jury or submit an issue that was not supported by evidence.

113

Even assuming arguendo that the instruction did permit the jury to find that the conversion ordinance was procured by fraud, we are not convinced that such error was prejudicial. The appellants theorize that, absent this instruction, the jury could have found the contract between the Company and agreement for removal of the scrap was a bona fide agreement and that the parties were in good faith recognizing and complying therewith and that the finding of fraud with respect to the scrap may have been predicated upon fraudulent procurement of the conversion ordinance for which there is no evidentiary support. Thus, in effect, appellants would have us assume that the jury found no fraud in the scrap transactions even though the evidence of fraud, quite apart from the ordinance, was substantial, and that it did find fraud in the procurement of the conversion ordinance where there was absolutely no evidence of fraud. Although we cannot speculate on what may have been the basis for the jury's verdicts, we are not required to indulge in the assumption that a jury that deliberated for five full days and returned verdicts which demonstrated a clear and understanding grasp of the evidence and the law, was a jury that lacked all common sense.

114

As we have seen, Ossanna, Larrick and Harry Isaacs were convicted of the substantive offenses of interstate shipments of property fraudulently obtained and they with Fred Isaacs and Jeffords were convicted of the conspiracy to commit the substantive offenses. The contention is now made by Ossanna, Larrick and the Isaacses that their rights were substantially prejudiced by the manner in which the interstate shipment counts were submitted to the jury. Specifically, it is asserted and argued that these alleged offenses should have been submitted as a part of the overall scheme and artifice to defraud the Company.[35] Additionally, these appellants also contend that the evidence was insufficient to justify a finding that the property transported was obtained by fraud, i.e., that the proper foundation was not laid in that respect. Ossanna and Larrick also argue that there was no evidence that they participated either directly or by concert in obtaining the property by fraudulent means or that they participated in the shipment thereof or derived any benefits therefrom.

115

In our view, it is unnecessary to consider or dispose of these claims of error. Firmly embedded in federal jurisprudence is the principle that a general sentence on several counts of an indictment will be sustained on appeal if the defendant was properly convicted under any count which is good and which is sufficient in itself to support the judgment and sentence. Barenblatt v. United States, 360 U.S. 109, 115, 79 S.Ct. 1081, 3 L.Ed.2d 1115; Lawn v. United States, 355 U.S. 339, 359, 78 S.Ct. 311, 2 L.Ed.2d 321; Bunn v. United States, 8 Cir., 260 F.2d 313, 316; Guon v. United States, 8 Cir., 285 F.2d 140, 142.

116

The court imposed a general sentence on Ossanna, Larrick and Harry Isaacs on their convictions of Counts XIV, XV and XVI (interstate shipments) and XVII (conspiracy). The sentences thus imposed (four years imprisonment and $10,000 fine on Ossanna and Harry Isaacs, two years' imprisonment and $2,000 fine on Larrick) are within the limit of punishment authorized for conviction of conspiracy. Title 18 U.S.C.A. 371.

117

We have demonstrated and held in our disposition of the main issue that there was substantial evidence to support the finding of an overall scheme and conspiracy, and the convictions of conspiracy. In this situation the complaining appellants were not prejudiced by the claimed erroneous submission of the interstate shipment counts.

118

Appellant Fred Isaacs contends that the trial court committed reversible error in refusing to strike certain testimony elicited from a Government witness.

119

Special Agent of the Internal Revenue Service, Judson H. Peterson, testified that on September 11, 1959, he and another special agent called on Fred Isaacs, primarily for the purpose of obtaining a specimen of his handwriting. Apparently the agents were making an investigation with respect to income tax returns filed by Harry and Fred Isaacs. During the conversation Harry Isaacs, who was also present, refused to give a sample of his handwriting and stated that his attorney had instructed him to furnish records but to do no more than that. Then Fred Isaacs said something 'about wondering why the Internal Revenue agents or Internal Revenue Service was investigating this case, and he mentioned something about newspaper publicity, * * *. Then Fred went on to say, he said, 'Answer one question,' and he brought up, as he called it, a problematical case, 'Of a company like ours that stole from the Transit Company a lot but reported the profits, why is the Internal Revenue in on it?' He said, 'it's something for the stockholders.' * * * Then Harry Isaacs stated, 'We are not the only ones that got something from this company. How about that guy in St. Paul? How about Northern States Power?' Then he went on to say, 'Is it because it came out this fellow Blumenfield is in Mid-Continent?" Following this testimony the court recessed for a brief period, and upon proceedings being resumed, counsel for Harry Isaacs moved the court to strike Peterson's testimony to the effect that Harry Isaacs had refused to talk, but no motion was made to strike Peterson's testimony relating to Fred Isaacs nor was any objection registered with respect to the alleged statement by Fred Isaacs. To the contrary, counsel for the latter cross-examined Peterson at some length in regard to the statement and attempted to establish that the statement was hypothetical in character and further that Fred Isaacs was very cooperative during the interview. On re-direct examination the statement was ~~again explored by Government counsel, at which time counsel for Harry and Fred Isaacs made~~ this objection: 'Objected to as not proper re-direct examination, Your Honor; repetition.' Peterson's testimony completed the proceedings for the day, and the next morning, for the first time, counsel for Fred Isaacs moved the court to strike the italicized portion of Peterson's ~~testimony on the ground that the statement attributed to Fred was hypothetical in nature and~~ could not under any circumstances be regarded as an admission against interest. The motion was denied and error is now assigned because of the court's action in that respect.

120

The state of the record brings into question the reviewability of the assignment now urged upon us. The rule is firmly settled that objections to evidence should be made as soon as it is apparent that the evidence is for any reason objectionable. This rule, of course, has a very salutary purpose. It affords the trial court an opportunity to act promptly in an effort to remove from the jury's consideration evidence which for any reason has no place in the lawsuit. We were confronted with a similar situation in Marx v. United States, 8 Cir., 86 F.2d 245, and there laid down the rule in this language (86 F.2d at p. 251):

121

'Again, it is noted that the testimony at which the motions are directed was for the most part admitted without objection, and the grounds for objection thereto were as apparent when the evidence was offered as at the close of the testimony. Counsel could not be permitted to sit idly by and permit the witnesses to testify, possibly hoping that his client might benefit thereby, and then, finding that the testimony was not beneficial, move to strike it out. Such a practice cannot be tolerated. It is only when evidence apparently admissible when offered is shown by subsequent developments to be inadmissible that the objection may be made in the form of a motion to strike out or by a request for an instruction that its effect be limited or that it be withdrawn from the consideration of the jury. St. Louis & S.F.R. Co. v. Duke (C.C.A.8) 192 F. 306. Ordinarily, an objection to the introduction of testimony must be made at the earliest possible opportunity after the ground of objection becomes apparent, or it will be held to have been waived, and a motion to strike out objectionable testimony must be made at the time the testimony is given if the ground of objection to it is then apparent.'

122

The Marx case was cited with approval and followed by the Sixth Circuit in Metcalf v. United States, 195 F.2d 213, 216, where it is stated:

123

'It is the well settled rule that objections to evidence should be timely made when the evidence is offered, and that it is within the discretion of the trial judge to sustain or overrule a motion, delayed until the close of the Government's case, to strike from the consideration of the jury evidence previously received without objection,'

124

And by the Second Circuit in United States v. Parnes, 210 F.2d 141, 143. Thus the question to be resolved is whether under the circumstances of the situation we may now properly say the trial court abused its discretion in denying the motion to strike. It can hardly be gainsaid that if the statement of Fred Isaacs was an admission against interest, which is the position of the Government, then by all rules of evidence it was clearly admissible. See Opper v. United States, 348 U.S. 84, 75 S.Ct. 158, 99 L.Ed. 101; On Lee v. United States, 343 U.S. 747, 756, 72 S.Ct. 967, 96 L.Ed. 1270; Segal v. United States, 8 Cir., 246 F.2d 814, 818, cert. den. 355 U.S. 894, 78 S.Ct. 269, 2 L.Ed.2d 192; Hill v. United States, 9 Cir., 261 F.2d 483, 489; Moreland v. United States, 10 Cir., 270 F.2d 887, 890; 22A C.J.S. Criminal Law 730; Wigmore on Evidence, 3 Ed. Vol. 4, 1050.

125

Considering the circumstances under which the statement was made-- the fact that Fred Isaacs knew that he was a suspect and that income tax returns with which he was connected were being investigated; that he was told by the special agents that they took cognizance of other federal offenses, we are inclined to view the statement under question as an admission against interest and properly admissible. In any event, having in mind that the evidence of fraudulent conduct on the part of Fred Isaacs with respect to the scrap transactions was substantial, if not over whelming, we are unable to perceive of any prejudice flowing from the court's refusal to strike testimony.

126

The final assignment of error common to all appellants is that the Assistant United States Attorney in closing or rebuttal argument was guilty of such deliberate, repeated and flagrant misconduct as to seriously prejudice their right to a fair trial. We shall review the circumstances pertinent to this contention.

127

The arguments of counsel consumed a total of five days. All of July 25, 1960 and a portion of July 26 was required by Mr. Clifford Janes, Assistant United States Attorney, in presenting the opening argument for the Government. Counsel for defendants (five in number) presented their arguments on July 26 through July 28. Mr. Hyam Segell, Assistant United States Attorney, made the rebuttal argument which is the subject of attack and consumed all of July 29 in doing so. Not a single objection was made or voiced by any of the attorneys during the course of Mr. Segell's argument. However, after the conclusion thereof approximately sixty exceptions were taken by appellants' counsel. Judge Nordbye duly considered the exceptions and in his charge specifically instructed the jury to disregard certain portions of Mr. Segell's argument.

128

During oral argument, we were told that in failing to make any objection during the course of the claimed prejudicial remarks counsel for appellants followed the custom or practice which has prevailed in the United States District Court for the District of Minnesota apparently since our opinion in London Guarantee & Accident Co. v. Woelfle, 8 Cir., 83 F.2d 325, 338-344.[36] That case was decided in 1936 and prior to the effective date of the Federal Rules of Civil Procedure in 1938, 28 U.S.C.A., and the Federal Rules of Criminal Procedure in 1946, 18 U.S.C.A. However, subsequent to the adoption of the rules we stated in another civil case, Chicago & N.W. Ry. Co. v. Green, 8 Cir., opinion filed October 27, 1947, 164 F.2d 55, at p. 64:

129

'A party is not entitled as a matter of right to seek a reversal for improper argument to the jury, where he fails to make objections during its course or to take exceptions promptly at its close.'

130

Out attention has not been directed to a criminal case where we had occasion to deal with the question and independent research fails to disclose that we have considered the matter. Other circuits have spoken on the subject. The Second Circuit held by implication, if not directly, that Rule 51, Federal Rules of Criminal Procedure (same as Rule 46, Federal Rules of Civil Procedure) contemplates that the objection should be made at the time of the improper argument. In United States v. Kyle, 2 Cir., 257 F.2d 559, cert. den. 358 U.S. 937, at p. 564, 79 S.Ct. 327, 3 L.Ed.2d 308, that Court stated:

131

'What defendants now characterize as 'inflammatory and personal vituperation' and a 'heated appeal to passion' by the prosecutor on summation apparently failed to stir either of them or their counsel at the time of the utterances into voicing an objection or a request for a direction from the court. Rule 51, Fed.R.Cr.P., 18 U.S.C.A.'

132

Even before the rules were adopted, the Seventh Circuit, in Paschen v. United States, opinion filed April 12, 1934, 70 F.2d 491, at p. 502, made this observation:

133

'* * * the ordinary method for undertaking to keep overenthusiastic counsel within fairly reasonable bounds is to call the court's attention from time to time to alleged departures, and to procure from the court a ruling and direction with reference thereto. It does not appear that at any time during the argument objection was made to the things now urged as error, and we do not find these so palpably improper as would justify us in taking notice of them without timely objection, and thus to give opportunity for correction, if correction is necessary.'

134

In United States v. Socony-Vacuum Oil Ci., 310 U.S. 150, at p. 240, 60 S.Ct. 811, 852, 84 L.Ed. 1129, opinion filed May 6, 1940, the question was not an issue, but we note that the Court did state:

135

'Under the second of these objections, respondents complain of the plea to the jury not to 'let your Government and the United States and its citizens and society down', and that government counsel 'believe to the bottom of their hearts in the justice of the cause that they espouse here'. No objection at that time was made by defense counsel.'

136

In a situation where, as here, the claim is made that the prosecutor engaged in making repeated prejudicial statements to the jury throughout his argument and from the inception thereof, we believe the better practice is to make objection at the time of the asserted prejudicial utterances. This will afford the court an opportunity to properly warn the prosecutor that improper argument will not be tolerated, and to promptly take action designed to more effectively remove from the minds of the jury the sting or poison of the prejudicial statement. This is the practice that has been adhered to in a number of criminal cases. See and compare Mellor v. United States, 8 Cir.,160 F.2d 757, 765, cert. den. 331 U.S. 848, 67 S.Ct. 1734, 91 L.Ed. 1858; Myres v. United States, 8 Cir., 174 F.2d 329, 338, cert. den. 338 U.S. 849, 70 S.Ct. 91, 94 L.Ed. 520; Greenberg v. United States, 1 Cir., 280 F.2d 472, 474; United States v. Spangelet, 2 Cir., 258 F.2d 338, 342; Weathers v. United States, 5 Cir., 117 F.2d 585, 586; Henderson v. United States, 6 Cir., 218 F.2d 14, 21, 50 A.L.R.2d 754, cert. den. 349 U.S. 920, 75 S.Ct. 660, 99 L.Ed. 1253.

137

Since it is apparent that all of the parties and the court regarded what transpired as being sufficient to preserve the right of appellants to have the argument to which exceptions were taken reviewed on appeal, we have proceeded accordingly.

138

While the propriety of the argument of Government counsel in criminal prosecutions has been the subject of consideration in many cases, no exact or precise test or standard may be applied to all situations. The dominating question, always, is whether the argument complained of was so offensive as to deprive the defendant of a fair trial. It is not amiss for us to again point out that in a criminal case, the United States Attorney has imposed upon him a high and important responsibility. He should present the Government's case with vigor and earnestness, and use all legitimate means to bring about a just conviction, but, likewise, he must refrain from indulging in tactics or methods calculated to produce an unjust conviction. In Berger v. United States, 295 U.S. 78, at p. 88, 55 S.Ct. 629, at p. 633, 79 L.Ed. 1314, heavily relied on by appellants, the Supreme Court gave this admonition:

139

'The United States Attorney is the representative not of an ordinary party to a controversy, but of a sovereignty whose obligation to govern impartially is as compelling as its obligation to govern at all; and whose interest, therefore, in a criminal prosecution is not that it shall win a case, but that justice shall be done. As such, he is in a peculiar and very definite sense the servant of the law, the twofold aim of which is that guilt shall not escape or innocence suffer. He may prosecute with earnestness and vigor-- indeed, he should do so. But, while he may strike hard belows, he is not at liberty to strike foul ones. It is as much his duty to refrain from improper methods calculated to produce a wrongful conviction as it is to use every legitimate means to bring about a just one.'

140

While the 'improper methods' test is broad in its meaning, '* * * each case necessarily turns on its own facts.' United States v. Socony-Vacuum Oil Co., supra, 310 U.S. at p. 240, 60 S.Ct. 811. Thus, we are required to determine whether in light of all the facts and circumstances, with particular emphasis on all of the arguments, the utterances complained of so influenced the jury as to bring about an unjust conviction.

141

We deem it unnecessary to enumerate and discuss the numerous objections to Mr. Segell's argument. It is sufficient to say that the alleged prejudicial remarks may be characterized, generally, as being-- one, outside the record and beyond the scope of the record; two, defamatory and derogatory of defendants and their counsel, and three, personal opinion and belief of guilt of the defendants. In reaching our conclusions, it should be kept in mind that we are permitted to examine 'only the cold print of the record, and therefore should weigh carefully the findings of the trial judge, who saw and heard the actual events, and found no prejudice. See United States v. Holt, 7 Cir., 1939, 108 F.2d 365 and Tuckermann v. United States, 6 Cir., 1923,291 F. 958, 959.' Orebo v. United States, 9 Cir., 293 F.2d 747, at p. 749. We have nonetheless meticulously examined and analyzed all arguments and have independently concluded that the utterances complained of, when viewed in context and in light of all circumstances, were not calculated and designed to produce an improper conviction and did not in fact have that effect. Judge Nordbye was of the opinion that Mr. Segell's argument in some respects went beyond the bounds of propriety, and specifically instructed the jury to disregard the improper statements.[37]

142

We cannot escape the conclusion that most of the objections to the argument resulted from hypercritical counsel who were, as aptly stated by Judge Nordbye, 'overly sensitive' and who 'with microscopic captiousness, find fault with the most innocuous statements of government counsel.' We are mindful that prior to the commencement of arguments the trial of this case had consumed 63 working days. It was a bitterly fought contest with no quarter being asked and none being given by either side. '* * * Sone latitude must be given to lawyers' language in a hard fought case.' United States v. Kravitz, 3 Cir., 281 F.2d 581, 586, cert. den. 364 U.S. 941, 81 S.Ct. 459, 5 L.Ed.2d 372. 'In the heat of oral arguments and summations counsel sometimes use language they would not have used under less trying circumstances, and in order for such comment to constitute reversible error the language used must have been plainly unwarranted and clearly injurious. La Feber v. United States, 8 Cir., 59 F.2d 588.' Mellor v. United States, 8 Cir., 160 F.2d 757, 765, cert. den. 331 U.S. 848, 67 S.Ct. 1734, 91 L.Ed. 1858. It is, of course, well settled that counsel for the Government is accorded the provilege of arguing to the jury all possible inferences which reasonably flow from the evidence. Kempe v. United States, 8 Cir., 160 F.2d 406, 411, cert. den. 331 U.S. 843, 67 S.Ct. 1534, 91 L.Ed. 1864; Meller v. United States, supra, 160 F.2d at p. 765, cert. den. 331 U.S. 848, 67 S.Ct. 1734, 91 L.Ed. 1858; Gray v. United States, 8 Cir., 14 F.2d 366, 367.

143

It also appears that portions of the argument said to be prejudicial were motivated by statements made by defense lawyers in their arguments and consequently fall within the rule that prejudicial error does not result from improper remarks in closing arguments invited or provoked by opposing counsel. Myres v. United States, 8 Cir., 174 F.2d 329, 339, cert. den. 338 U.S. 849, 70 S.Ct. 91, 94 L.Ed. 520; Brennan v. United States, 8 Cir., 240 F.2d 253, 263-264, cert. den. 353 U.S. 931, 77 S.Ct. 718, 1 L.Ed.2d 723.

144

In the final analysis the question before us is not whether Mr. Segell's argument was in certain respects beyond the bounds of propriety and improper, but whether it was prejudicial and prevented the jury from exercising freedom of judgment and thought in its deliberations. Of vital, if not decisive, importance is what transpired after the so-called prejudicial argument was delivered. The jury received the case at 5:30 p.m. on August 1, 1960, and deliberated until the morning of August 6 when the verdicts were returned. Defendant Blumenfield, who was the subject of some of the challenged argument, and whom the Government was manifestly interested in convicting, was acquitted by the jury.[38] Defendants Ossanna, Larrick and Isaacs were also acquitted of certain counts of the indictment. The sum total of the rusult demonstrates convincingly that the jury adhered to the court's admonition 'to analyze and weigh all of the testimony you have heard so as to enable you to determine intelligently the factual issues which will be submitted to you. Then you are to apply the law which the Court gives to you to the facts as you may find them to be from the evidence so that justice may be done between the Government and these defendants.' Certainly the time consumed in deliberating and the verdicts that were returned indicate unusual discernment on the part of the jury and should dispel any feeling that it was improperly influenced, prejudiced or misguided by anything that was said by Government counsel. The gross misconduct of the prosecutor in Berger v. United States, 295 U.S. 78, 55 S.Ct. 629, 79 L.Ed. 1314, renders that case inapposite. There, improper cross-examination was resorted to in that the prosecutor among other things assumed prejudicial facts not in evidence, bullied and argued with witnesses and in general conducted himself in a 'thoroughly indecorous and improper manner.' (p. 84, 55 S.Ct. p. 631) This infraction was compounded by an argument which the Supreme Court regarded as 'pronounced and persistent.' (p. 89, 55 S.Ct. p. 633) In reversing, the court looked beyond the improper conduct and concluded that '* * * The case against Berger * * * may properly be characterized as weak--depending, as it did, upon the testimony of Katz, an accomplice with a long criminal record.' 295 U.S. 78, at p. 89, 55 S.Ct. p. 633. Significantly, the court also stated, at p. 89, 55 S.Ct. p. 633: 'If the case against Berger had been strong, or, as some courts have said, the evidence of his guilt 'overwhelming,' a different conclusion might be reached.' Here, there is no claim or suggestion that either of the Assistant United States Attorneys who prosecuted the case engaged in conduct during the trial which transgressed upon the rights of appellants and, unlike Berger, we cannot characterize this as a weak case. To the contrary, there was substantial and cogent proof pointing to the guilt of appellants.

145

The Supreme Court of the United States was again concerned with the argument of Government counsel in United States v. Socony-Vauum Oil Co., supra. As a reading of the opinion discloses, 310 U.S. pp. 238-243, 60 S.Ct. 811, counsel for the Government engaged in an argument which the Court regarded as 'undignified and intemperate' and not comporting

146

'with the standards of propriety to be expected of the prosecutor. But it is quite another thing to say that these statements constituted prejudicial error. In the first place, it is hard for us to imagine that the minds of the jurors would be so influenced by such incidental statements during this long trial that they would not appraise the evidence objectively and dispassionately. In the second place, this was not a weak case as was Berger v. United States, 295 U.S. 78 (55 S.Ct. 629, 79 L.Ed. 1314), where this Court held that prejudice to the accused was so highly probable as a result of the prosecutor's improper conduct 'that we are not justified in assuming its non-existence." 310 U.S. at p. 239, 60 S.Ct. at p. 852.

147

The Court's concluding remarks and observation on the subject of alleged improper argument are apropos here: "If every remark made by counsel outside of the testimony were ground for a reversal, comparatively few verdicts would stand." 310 U.S. at p.243, 60 S.Ct. at p. 853.

148

Anent the claim of procedural errors, the record attests to the patience and judicial poise maintained by the experienced and distinguished jurist who presided over the trial. His rulings demonstrate understanding, fairness, impartiality and wisdom. Both the Government and the appellants were represented by able, experienced and vigorous trial lawyers. The record is replete with objections, motions, etc., and in every instance where necessary Judge Nordbye accorded all parties a full opportunity to be heard before ruling. While it is extremely difficult, if not impossible, for a trial of this nature to be conducted without error of some degree, we are convinced that none of the court's rulings was prejudicial, and that appellants were given a fair trial.

149

The judgments are

150

Affirmed.

1

The parties in the numerous briefs have generally referred to the parent company and its subsidiaries as either TCRT or Transit Companies. Since all are regarded for the purpose of these cases as one company, we shall, in the interest of brevity, unless otherwise designated, refer to the parent company and its subsidiaries as the Company

2

The date of docketing appeals of the respective appellants governs and accounts for the order in which appellants' names appear in the records of this Court

3

'Whoever, having devised or intending to devise and scheme or artifice to defraud, * * * for the purpose of executing such scheme or artifice or attempting so to do, places in any post office or authorized depository for mail matter, any matter * * * to be sent or delibered by the Post Office Department, * * * shall be fined * * *.'

4

'Whoever, having devised or intending to devise any scheme or artifice to defraud, * * * transmits or causes to be transmitted by means of wire, radio, or television communication in interstate * * * commerce, any writings, * * * for the purpose of executing such scheme or artifice, shall be fined * * *.'

5

'Whoever transports in interstate * * * commerce any goods, * * * of the value of $5,000 or more, knowing the same to have been stolen, converted or taken by fraud; * * * shall be fined not more than $10,000 or imprisoned not more than ten years, or both.'

6

'If two or more persons conspire * * * to commit any offense against the United States, * * * and one or more of such persons do any act to effect the object of the conspiracy, each shall be fined not more than $10,000 * * *.'

7

The Trial court dismissed Counts IV, X, XI and XIII of indictment No. 4-59-CR. 77 prior to submission to the jury

8

A third indictment, being No. 4-59-CR. 78, was dismissed by the court pursuant to motions of defendants

9

Although numerous witnesses and exhibits were offered on behalf of defendants, none of them personally testified

10

Harry and Fred Isaacs were represented by the same counsel, and each of the remaining defendants was represented by counsel of his own selection

11

Pursuant to our Rule 8(i) we have reviewed this case upon the original papers and the typewritten transcript of the evidence and proceedings at trial

12

In Larrick's brief this statement appears: 'Larrick does not now raise the question of whether or not there would be sufficient evidence to warrant submission of the scrap transactions as against him, if done so under proper circumstances. It is with respect to the other transactions that the evidence is insufficient to warrant submission as against him.'

13

In October and November, 1957, scrap was disposed of for which the Company received $487.34, but for all practical purposes the scrap transactions ceased in September, 1955

14

Under date of February 27, 1952, the auditors in a letter to Ossanna as president, stated inter alia:

'A second and possibly stronger objection to the proposed method is that it would mean the complete abandonment of accounting control of scrap between the time that it is accumulated and the time it is sold. The value of scrap in inventory has been relatively large at some times during the course of the years; certainly one would not consider abandonment of accounting control over a similar amount of cash. This accounting control has two practical applications. In the absence of accounting control, the responsible officers have little basis for assuring themselves that proper amounts are received for sales of scrap. Also, the absence of accounting control may well lead to absence of physical control. * * * The proposed method exposes the companies to greater danger of loss through stealing.'

In a letter under date of November 10, 1952, the auditors advised Ossanna that because of the weaknesses in the accounting records of the Company, they were unable to satisfy themselves as to the correctness of the financial statements and did not wish to continue as auditors.

15

Barnes resigned from the Company shortly after that date and in September, 1952, became vice-president and general manager of Omaha Transit Company and has been president of that Company since 1955

16

After American Iron employees had prepared the weight tickets they were changed and falsified by erasing the original weights and inserting lower weights (on an average these lower weights were 20% of the actual weights). In some cases the original tickets were discarded and new false weight tickets prepared. These false weight tickets were than sent to Larrick, who prepared invoices without out prices, which were sent to American Iron, who inserted the prices and calculated the amount it would pay the Company

17

The effect of this offer is not made clear to us from other portions of the letter or record

18

As previously stated, these corporations are subsidiaries of the parent company. Apparently they owned the streetcars and the notes ran in their favor

19

The covering letter from Banco de Commercio to Northwestern National Bank referred to a receipt from Francis, which actually was in the form of a letter purportedly written by Francis to Banco de Commercio, stating, inter alia: 'In accordance with the instructions of the mentioned Bank (Northwestern National) they have gave to me from your collection the amount of.$61,500 U.S.C. * * *.' The letter states further that 'Amount for liquidation of the interests of the Financiera S.A.' was $18,739.71, thus indicating that Francis' net was $42,760.29

20

A small section extending about a block at the city limits of Minneapolis, having commercial value, was appraised at $9,000; the portion of the strip which extended 1.25 miles, being 66 feet wide, was appraised at $15,500; the portion that extended from Woodale Avenue to Brookside Station, being 100 feet wide, was appraised at $23,000, and the remainder at $37,000

21

Daniel J. Bren, who was assistant to the president in 1951, testified: 'We established a price on the right-of-way from France Avenue to Hopkins of approximately $98,000.'

22

From plats of the right-of-way it would appear that this portion constituted more than half of the entire strip

23

Although all prior dealings for purchase of the property had been on behalf of the six municipalities, it will be noted that the option was only with the City of Hopkins

24

Thus we see that Ossanna had placed a value of $150,000 on the entire right-of-way

25

Apparently the net amount realized by Carlson, after deducting expenses incident to sales, was $90,533.92

26

Evidence was offered by appellants to show that the sum of $52,000 was paid to reduce indebtedness of Fred A. Ossanna, Jr. to Shady Oaks Realty Company, a corporation owned by the Ossanna family, and indebtedness of Margaret A. Stirton to appellant Ossanna

27

In an interview with two agents of the Internal Revenue Service, Ossanna stated that he had personally sold the power plant to the Northern States Power Co. for $1,250,000

28

Shortly after receiving the commission, Villaume gave $7,500 thereof to the Ossanna Foundation. The Government's theory was that as a part of the scheme and artifice to defraud, the Company paid in the form of a commission $7,500 more than it was obligated to pay to Villaume. This payment was the subject of Counts XII and XIII of the indictment. As we have seen, the court dismissed Count XIII and the jury acquitted on Count XII

29

These minutes recited in part: 'There was presented to the Committee request for exclusive option on the sale of the company property at Snelling and University Avenues. This was made by the J & C Holding Company, real estate dealers at 1321 Nicollet Avenue. * * * On motion by Mr. Larrick, seconded by Mr. Aune, it was moved that the Executive Committee * * * instruct its officers to grant exclusive right of sale contract to the J & C Holding Company * * * for a period of ten months from April 15, 1954, on a commission basis of 5% * * *. In case of the sale of the property by J & C Holding Company, or any other sales agency, Commission of 5% is to be paid * * * in two equal installments, not less than 30 days apart.'

30

In his brief Larrick states: 'No one would contend that the defendant Towey, masquerading as Bernard Heintz, in reselling this property to the Heutmakers, did not profit thereby and did not defraud the Transit Company.'

31

Judge Nordbye submitted the issue of a single, overall scheme and a conspiracy to the jury as follows:

'The first question, therefore, which you jurors will have to determine is whether the Government has established beyond a reasonable doubt the overall scheme or plan to defraud, and loot, so to speak, the Transit Company of property, real and personal, which would be available by reason of abandonment or non-use on account of the conversion of the Transit Company transportation facilities from streetcars to buses. * * *

'The Government does not contend that these defendants got together at one time and planned a scheme to defraud the Transit Company. It is sufficient if the scheme to defraud as alleged was conceived in the minds of one or more of the defendants. If it was, and the other defendants, with knowledge of the scope of the scheme, knowingly and intentionally entered into and participated therein, then as to such defendant or defendants, they would be parties to the scheme and responsible in law for the acts of their fellow confederates in furtherance of the scheme, if committed during the existence of the scheme. * * *

'In summary, therefore, as to the mail fraud and wire fraud counts, in order to find any one of these defendants guilty, you must find that there was an overall scheme initiated by one or more of these defendants to defraud the Transit Company of its assets, real or personal, which were abandoned or made available for sale by reason of the conversion from streetcar transportation to bus transportation. If there has not been established such an overall scheme to defraud beyond a reasonable doubt, then no defendant can be found guilty of any of these counts.

'A conspiracy, members of the jury, is an agreement of two or more persons by concerted action to perform an unlawful act. One person alone cannot conspire. Two or more persons are indispensable. The essence of a conspiracy is a common design which actuates the parties. * * *

'The question you should ask yourselves, in light of the evidence, is: Was there an agreement or understanding to loot or plunder the Transit Company, either express or implied, between two or more of the defendants named and embraced in that overall scheme that they would commit one or more of the unlawful acts charged in the conspiracy count of the indictment?'

32

Loss from underground cable $815,000, Mexican notes $238,439, Hopkins Right-of-Way $75,000 (this is based on appraised value of property-- Carlson and the Ossannas actually netted over $90,000 from the transaction), Jeffords' commissions $107,500, Towey Lots $5,000. Additionally, there was the loss from overhead scrap and rails, the amount of which does not appear with certainty. We have seen, however, that the Company was required to pay to the City of Minneapolis approximately $1,200,000. There was evidence from which the jury could find that a large portion of this expense should have been borne by American

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The court instructed the jury that there was no evidence that Ossanna or Isaacs knew of the Blumenfield group's interest in Mid-Continent

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Bollenbach presented an unusual situation. The Government conceded that the instruction under attack was an improper declaration of the law but argued that 'the sting of error is extracted because there was proof, other than the erroneous 'presumption', on the issue of Bollenbach's participation in the wrongdoing before the transportation of the stolen securities had ended. This is to disregard the vital fact that for seven hours the jury was unable to find guilt in the light of the main charge, but reached a verdict of guilty under the conspiracy count five minutes after their inquiry was answered by an untenable legal proposition. It would indeed be a long jump at guessing to be confident that the jury did not rely on the erroneous 'presumption' given them as a guide.' 326 U.S. at p. 614, 66 S.Ct. at p. 406

Yates is also clearly distinguishable in that the erroneous instruction went to the controlling law of the case.

In Weiler the court held it was prejudicial error on the facts of this case to refuse an instruction as to the quantum of proof required in a perjury case and thus is clearly distinguishable from the question under consideration. The court recognized that even as to such a basic proposition, it is not always prejudicial to refuse such an instruction, citing Goins v. United States, 4 Cir., 99 F.2d 147; Goins v. United States, 306 U.S. 622, 59 S.Ct. 461, 83 L.Ed. 1028; 323 U.S. at p. 611, 65 S.Ct. 548.

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Counts XIV, XV and XVI covered the interstate shipments of property fraudulently obtained but did not charge that these offenses were a part and parcel of the overall scheme to defraud. However, the Government in response to motions for bill of particulars did claim that the fraud in connection with the property that was the subject of these counts was committed in fulfillment of the scheme and artifice which was alleged in the first count. During the trial the Government asserted that it was not necessary that a conviction under Counts XIV, XV and XVI be predicated on a finding that the offenses there charged were a result of the overall scheme. The trial court agreed and refused to submit the counts on that theory

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We note, however, in Fred Issacs' brief, this statement appears: 'At the outset, the prosecutor carefully forestalled any challenge by defense counsel or possible rebuke by the trial court during the course of his argument, by blandly assuring the jury that 'it is a courtesy among lawyers not to interrupt each other in final argument.' The supposed custom is not evidenced by the record (and was, indeed, unknown to other counsel), but defense counsel could not threafter object to any misstatement during the course of the argument without incurring the risk of offending the jury.'

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In summary, the court instructed the jury that there was no evidence to support Mr. Segell's statement that the case was comparable to the fraud case of one Wilbur Foshay and the jury was instructed to disregard that statement; that there was no evidence to support Mr. Segell's statement that there was any money fraudulently passing back and forth between or among the defendants from the Jeffords commission transaction, or the Isaacs scrap transaction or the Francis commission payment; that any comment by Mr. Segell as to the position occupied by the defendants and their attorneys in the court room during the trial was without significance and any reference thereto was to be disregarded by the jury; that 'counsel sometimes refer to their own personal opinions, or their own views or their own knowledge in their arguments. Well, unless such opinion or views or knowledge are based upon the evidence, they will, of course, be disregarded by you.' The jury was instructed to disregard the statement by Mr. Segell to the effect that certain counsel for defendants during their arguments had 'inspirational moments of truth.' In this connection, the court stated to the jury: 'I rather think Mr. Segell was indulging in some flights of oratory in using that expression, and he made use of it with reference to the arguments of Mr. Dienard and Mr. Smith. Well, in any event, such statements must not be taken by you as any reflection on the manner in which either of these counsel have conducted their defense, or as having any bearing upon the sincerity of the arguments which these lawyers have made in behalf of their clients.' During his argument Mr. Segell referred to Mr. Jeffords as a 'pathological liar.' The court stated to the jury that 'There is no evidence to sustain that statement, and that argument will be disregarded by you.'

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Defendant Blumenfield was convicted of a Mann Act (19 U.S.C.A. 2421 et seq.) violation in the United States District Court for the District of Minnesota and his conviction was affirmed by this court. Blumenfield v. United States, 284 F.2d 46, cert. den. 365 U.S. 812, 81 S.Ct. 693, 5 L.Ed. 692

American Iron & Supply Co.
Isadore Blumenfeld

2505 East Lake of the Isles Parkway: Built in 1958. The structure is a one story, 6386 square foot (6,500 square foot according to realtor,) five bedroom, seven bathroom, nine room, two fireplace, single family dwelling on a 1.27 acre site. The current owner of record is Fred N. Isaacs and the current taxpayer is Rhea Isaacs. The property is currently listed for sale with an asking price of $5,750,000.00. The late Fred Isaacs was the chairman of the board of American Iron, which currently processes 20,000 tons of scrap a month along three blocks of Pacific Street on the western bank of the Mississippi River, 2.5 miles north of downtown. Abraham Isaacs founded American Iron in 1885, then his son, Harry Isaacs, became president of the company during World War I, and then Fred Isaacs (1922-2005,) the son of Harry Isaacs, became the president of the company in the 1950's, John Isaacs, Fred Isaacs' son, was the president and CEO until 2003 , when Rhea Isaacs, Fred Isaacs' wife, and Mindy Odegaard, Fred Isaacs' daughter, were added to the American Iron board and the board terminated John Isaacs and promoted Rhea Isaacs. Fred Isaacs' grandfather, a Russian immigrant to Minneapolis, started hauling scrap by horse and wagon in 1885. Fred Isaacs joined his father, Harry Isaacs, in the business, American Iron & Supply Co., in the 1930s when he was 15, and started working there full time after high school. Rhea Isaacs, CEO of American Iron, made political contributions in 2005 and 2006 to Amy Klobuchar, the Minnesota Grassroots Victory Committee, Paul Ostrow, and Mike Erlandson. American Iron is one of only two scrap yards in the Twin Cities with a union workforce, with United Electrical Workers Local 1139 having represented workers at the company for the past 50 years. American Iron is the source of the "Kondirator" issue in North Minneapolis, having purchased the giant metal shredder from Lindemann of Dusseldorf, Germany, and litigation has resulted from city and neighborhood concerns about the noise and pollution potential of the Kondirator since 1991. Although American Iron now has a negotiated settlement of its litigation and permission to proceed with the Kondirator, scrap market and shredder market conditions have changed and the Kondirator is on hold. Fred Isaacs, Fred A. Ossanna, Benson M. Larrick, Harry H. Isaacs, Earl A. Jeffords, James H. Towey, Theodore Landy, and Isadore "Kid Cann" Blumenfield were prosecuted in 1960 in criminal mail and wire fraud, fraudulent property transportion in interstate commerce and conspiracy litigation related to the sale of a large amount of Twin City Rapid Transit rolling stock, track, and related property as scrap to American Iron & Supply Company and American Salvage & Supply Company in 1951, with the resulting convictions affirmed by the Ninth Circuit Court of Appeals in 301 F.2d 706 (1962). Officials of the former Twin City Rapid Transit Company were said to have accepted payoffs for selling company scrap metal, cable, and 400 miles of track at below market prices and also defrauded the company of more than $250,000 in the sale of 91 TCRT streetcars to Mexico City. The Isadore "Kid Cann," "Ferguson," or "Fergie Bloom" Blumenfeld gang was an extension of the Meyer Lansky crime syndicate out of Miami and Kid Cann controlled the Twin Cities rackets in the 1930's and 1940's. Isadore Blumenfeld (1900-1981,) the son of Phillip Blumenfeld and Eva Blumenfeld, was born in Rumnesk, Romania, came to the United States in 1902, drifted into gang fights on the streets of Minneapolis's "Newspaper Row" around 4th Street on the North Side, became the boss, with his brothers Harry Blumenfeld and Jacob "Yiddy Bloom" Blumenfeld, of one of the most powerful factions of North Minneapolis's Jewish Mafia, and ran much of his operation from Minneapolis' West Hotel and his criminal activities included bootlegging, racketeering, labor raqueteering, pimping, and prostitution. Kid Cann owned 16 percent of the stock of the Twin City Rapid Transit Company before its demise in 1954. Kid Cann was convicted on prostitution charges in 1959 and, after his release from prison, moved to Miami Beach with his best pal, Meyer Lansky, where he led a quiet retirement of stock fraud, money laundering, and shady real estate deals that left him a fortune of ten million dollars after his death of heart disease. Kid Cann was buried at Adath Yeshurun Cemetery in Edina, Minnesota. Abraham Isaacs (-1945) and Harris Isaacs (-1938) both died in Hennepin County. The 1918 city